Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

To: The Commission

REPLY COMMENTS OF PUBLIC SERVICE TELEPHONE COMPANY

Public Service Telephone Company ("PSTC"), through undersigned counsel, replies to comments in this proceeding bearing upon the question of whether the Commission should address the issue of Virtual NXX ("VNXX"), as originally raised by Sprint Corp.[1] As discussed below, several parties have commented upon the VNXX issue, invited by the *NPRM* in this proceeding.[2] PSTC's own experience is that wireless carriers have misused the Local Exchange Rating Guide ("LERG") in order to provide the wireless carriers' customers with local calling in the land-to-mobile direction and where interconnection agreements would have required such

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[1] *Developing A Unified Intercarrier Compensation Regime*, Sprint Petition for Declaratory Ruling, Public Notice, CC Docket No. 01-92, DA-02-1740, rel. July 18, 2002. ("*Sprint Public Notice*")

[2] *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, GN Docket No 09-51; WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45, released February 9, 2011 ("NPRM") at ¶¶684 – 686; *Comments of the Blooston Rural Carriers*, filed April 18, 2011, at p. 26; *Comments of Verizon,* filed April 18, 2011, at p. 32; *Comments of the CTIA* , filed April 18, 2011, at p. 45.

calls to be treated as interexchange on a retail basis. Thus, toll calling routes that existed prior to the creation of these VNXX arrangements by the wireless carriers have been erased. PSTC has been financially damaged as a consequence.

PSTC discusses below the long, unsuccessful litigation to which it has been subject on this issue. PSTC was among a number of early commenters, in 2002, asking the Commission to either deny Sprint's Petition, or to focus a specific proceeding on VNXX issues.[3] The following discussion illustrates why the Commission's policy guidance is necessary to assist state regulators and courts struggling with this issue.

Background of PSTC's VNXX-Related Litigation

PSTC is a small rural incumbent local exchange carrier ("RLEC") providing wireline telephone service to customers within a limited calling area in nine counties in middle Georgia, served by seven PSTC rate centers. PSTC has expanded local calling routes outside of its service area. These expanded calling routes were approved by the Georgia PSC. For example, PSTC customers in the PSTC rate centers of Lizella and Roberta can call AT&T (formerly BellSouth) customers in Macon, Georgia as a local call.

Beginning in 2005 and continuing into early 2006, PSTC and Verizon Wireless ('Verizon") voluntarily negotiated an interconnection agreement ("ICA"). In November of 2006, ALLTEL Communications, LLC ("ALLTEL") voluntarily opted-in to the same terms as used in the ICA between PSTC and Verizon.

In both ICA's the parties agreed to language, set forth in §IV(B)(3) of the agreements, to determine whether a land-to-mobile call would be treated by PSTC as toll or local. In other words, §IV(B)(3) determined how PSTC would bill its customer making the call. This section

[3] *See Reply Comment of Nebraska Independent Companies, Northeast Florida Telephone Company, Inc., Public Service Telephone Company, et al.*, CC Docket No. 01-92, filed August 19, 2002.

places two conditions on PSTC's obligation to rate a land-to-mobile call as local: 1) the PSTC customer's call to another incumbent carrier's NPA-NXX rate center code (the "NPA-NXX" number block) must be rated and dialed as a local call; and 2) the Verizon or ALLTEL number must be associated with the same rate center.

The Georgia Public Service Commission Litigation

Both Verizon and ALLTEL unilaterally rated their NPA-NXX number blocks to PSTC's rate centers, but entered coordinates in the LERG which routed the number blocks of the two carriers to AT&T facilities in Macon, Georgia. Macon is not within PSTC's service area.

PSTC informed both carriers that the split rating and routing constituted the practice of unlawful Virtual NXX and would cause PSTC to misrate calls as local, which should be toll. PSTC's response varied slightly with respect to each carrier. As to Verizon, whose numbers were not yet loaded into PSTC's switch, PSTC informed Verizon that it did not intend to load Verizon's unlawfully configured numbers. PSTC informed ALLTEL, whose numbers were already loaded into PSTC's switches and distributed to ALLTEL's customers, that it would begin charging toll for those calls routed to the Macon rate center.

Both Verizon and ALLTEL filed Complaints with the Georgia Public Service Commission ("Georgia PSC") and against PSTC.[4] Verizon sought to have PSTC load its split rated and routed code into PSTC's switches. ALLTEL sought to prevent PSTC from charging toll to its end users for calls to ALLTEL's locally rated number block.

PSTC answered the Complaints by arguing that the VNXX arrangement financially harmed PSTC by 1) erasing what would otherwise be toll routes for land-to-mobile traffic

[4] *Complaint of Alltel Communications Inc. Against Public Service Telephone Company to Stop Revocation of Local Dialing Parity by Public Service telephone Company and for Emergency Relief*, Georgia Public Service Commission Docket #23803; *Request for Emergency Relief Filed by Verizon Wireless*, Georgia Public Service Commission Docket #24752.

without satisfying the two conditions of §IV(B)(3) of the ICAs; 2) increasing the proportion of traffic subject to reciprocal compensation at a net cost to PSTC; and 3) unnecessarily imposing a transit fee of $0.0025 per minute from AT&T for usage routed down common trunks between certain PSTC exchanges and AT&T's Macon, Georgia tandem. Based upon the record, PSTC estimated that the monthly intrastate loss occasioned by Verizon's VNXX arrangement is approximately $10,000.00. PSTC estimated that its intrastate revenue losses occasioned by ALLTEL's VNXX are approximately $35,000.00 per year. These amounts would be multiplied, of course, to the extent that other wireless carriers operating in PSTC's area duplicate Verizon and ALLTEL's VNXX arrangements.

In Orders entered April 4, 2008,[5] the Georgia PSC granted the Verizon and ALLTEL Complaints against PSTC, requiring PSTC to load the split rated and routed Verizon number code, and to continue locally rated calling to ALLTEL's split rated and routed number block.[6]

PSTC sought review in the United States District Court for the Northern District of Georgia. The District Court held against PSTC in its order issued on February 4, 2010.[7] Thereafter, PSTC sought review of the PSC's Orders, and the District Court's affirmation thereof, in the United States Court of Appeals for the 11th Circuit. The U.S. Court of Appeals ruled against PSTC in its opinion dated December 9, 2010.[8]

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[5] *Order on Review of Hearing Officer's Initial Decision*, ALLTEL, Georgia PSC Docket Nos. 23803, filed April 4, 2008; *Order on Review of Hearing Officer's Initial Decision*, Verizon Wireless, Georgia PSC Docket Nos. 24752, filed April 4, 2008. (Attached as Attachment A).

[6] In essence, and as the hearing transcript demonstrates, the Georgia PSC's April 4 orders required PSTC to rate as local its end users' calls to mobile numbers being assigned outside of PSTC's service area.

[7] Public Service Telephone Company v. Georgia Public Service Commission, et. al., 755 F. Supp. 2d 1263, (N.D. Ga. 2010). (Attached as Attachment B).

[8] Public Service Telephone Company v. Georgia Public Service Commission, et. al., 404 Fed. Appx. 439 (11th Cir. 2010). (Attached as Attachment C).

The Commission Should Address Virtual NXX In Order to Guide Courts and State Regulators

PSTC submits that the history of its own litigation demonstrates the need for a Commission ruling on the issue of Virtual NXX practice. As discussed below, both the District Court and the Georgia PSC erroneously interpreted federal law in holding that the split rating and routing of an NPA-NXX, which resulted in telephone numbers being assigned outside PSTC's service area but within the Macon MTA, did not amount to Virtual NXX. PSTC respectfully submits that under this Commission's own precedent, including language in *Sprint Public Notice,*, wireless companies (like Verizon) engage in Virtual NXX where they rate a number block as local to an ILEC's service area and then route the call for termination outside that service area.

Such a declaration would be consistent with the Commission's earlier description of Virtual NXX in the *Sprint Public Notice*:

> Virtual NPA-NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area. In the Matter of Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd. 7610, para. 155 n. 188 (2001).

The Georgia PSC and United States District Court Made Erroneous Interpretations of the Commission's Rules and Precedent

The Georgia PSC and U.S. District Court erroneously interpreted federal law in finding that virtual NXX arrangements cannot exist for wireless carriers as long as the wireless numbers are assigned to subscribers within the MTA at issue.[9] The District Court made a related finding, equally erroneous, that voluntary industry standards on the subject of code loading have the force

[9] *See ALLTEL Order on Review*, supra fn. 5 at p 7-8; Public Service Telephone Company v. Georgia Public Service Commission, et. al., 755 F. Supp. 2d at *40.

of federal law, and required PSTC to load the split rated and routed codes and hence to honor the resulting Virtual NXX traffic. These points are discussed in order.

First, contrary to both the Georgia PSC and the District Court's holdings on the subject, this Commission has made clear that intra-MTA traffic exchanged by carriers and subject to reciprocal compensation may still result in a call being treated as an interexchange call for the wireline company's end user:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier. **This may result in the same call being viewed as a local call by the carriers and a toll call by the end-user**.[10]

Both the Georgia Commission and the District Court relied upon cases in the Eighth and Tenth Circuits in order to require PSTC to treat all intra-MTA land-to-mobile calls as local.[11] None of those cases involved the issue in this case – i.e., whether land-to-mobile calls leaving local calling areas, within the MTA, still remain local for calls from wireline end users; Atlas Tel. Co. v. Oklahoma Corp. Comm'n,[12] WWC License, LLC v. Boyle,[13] and Alma Communications Co. v. Missouri Pub. Serv. Comm'n[14] all involved reciprocal compensation for intra-MTA calling, or the application of toll charges to end users' calls to wireless NPA-NXX associated with rate centers in the end users' local calling area.

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[10] TSR Wireless, LLC, et al. v U.S. West Communications, Inc., et al., 15 FCC Rcd 11166, 11184 (2000)(emphasis added)(footnotes omitted), aff'd sub nom. Qwest Corp. v. F.C.C., 252 F.3d 462 (D.C. Cir. 2001).

[11] Neither the Georgia PSC nor the District Court logically explained how the split rating and routing schemes of Verizon and ALLTEL squared with the calling scope language, mentioned earlier, in section IV(B)(3) of the parties' ICAs. Although the correct interpretation of section IV(B)(3) is not the subject of these comments, its misinterpreted construction provided another reason to require PSTC to treat the calls in question as local.

[12] 400 F.3d 1256 (10th Cir. 2005).

[13] 459 F. 3d 880 (8th Cir. 2005).

[14] 490 F. 3d 619, 626-27 (8th Cir. 2007).

Indeed, the 8th Circuit's decision below in the WWC License case makes clear that, unlike the present case where the wireless numbers were actually being assigned outside of the PSTC's local calling area, that case dealt with a local calling scope:

> [Western Wireless] is not proposing that all calls from a Great Plains customer within an MTA be provided local treatment, but only that calls from a Great Plains customer to a Western Wireless customer with a locally rated number would have local dialing. Thus, Great Plains is asked only to treat locally rated Western Wireless calls in the same manner that it treats its own locally rated calls.[15]

In sum, both the Georgia Commission and the District Court over read and misconstrued the federal law on MTA-wide dialing. As discussed below, the District Court likewise erred on the subject of industry standards.

The District Court's second error, referenced above, concerns its finding that PSTC and the wireless carriers did not "...contract around the obligations of federal law".[16] The Court went on to define "federal law" as the "guidelines" developed by the Alliance for Telecommunications Industry Solutions Industry Numbering Committee ("ATIS"), covering the loading of codes within a specific time, and allowing carriers to "select different geographic locations for the rating and routing of calls".[17] Thus, the Court reasoned that in the absence of a contractual provision relieving PSTC of its "federal law" obligation on code loading, PSTC was required to load the split rated and routed Virtual NXX codes.

The District Court's finding that industry guidelines amount to federal law is incorrect, and this Commission should clarify the matter. One need only examine the FCC *Notice of Proposed Rulemaking* relied upon by the Court[18] for proof of the Court's error. The FCC stated there that the purpose of its rulemaking was to determine whether certain industry guidelines

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[15] WWC, LLC v. Boyle, 2005 U.S. Dist. LEXIS 17201, at 1415 (emphasis supplied).
[16] Public Service Telephone Company v. Georgia Public Service Commission, et. al., 755 F. Supp. 2d *36.
[17] *Id.*
[18] *Id.*

"should be modified or replaced, wholly or in part, by enforceable rules."[19] The Commission there proposed to strengthen the Central Office Code Utilization Survey ("COCUS") because of its shortcomings. Among the principal shortcomings was the fact that industry responses to the COCUS were not mandatory, because it was developed as a guideline: "because the COCUS was established through industry guidelines, carriers do not have an obligation to respond."[20]

ATIS-0300051, cited by the District Court, makes clear that industry members are not required to follow particular guidelines, unless incorporated by the FCC in its rules. Section 2.8 of the guideline states:

> These assignment guidelines were prepared by the industry to be followed on a voluntary basis. However, FCC 00-104- Report and Order and further Notice of Proposed Rule Making, released March 31, 2000 and FCC 00-429- Second Report and Order, Order on Reconsideration contain 'Rules' associated with CO/NXX number administration which have been incorporated and are referenced by a footnote in the format 'FCC 00-104…' or 'FCC 00-429'…[21]

As previously mentioned, the District Court referred to two industry guidelines in its decision: 1) codes must be loaded within a specific time and 2) ATIS-0300051 allows carriers to select different geographic locations for the rating and routing of calls.[22] There is no FCC rule or order incorporating any of these ATIS-0300051 sections, nor does this section indicate that fact.

With respect to the latter points, CTIA – the Wireless Association's Comments argue that Sprint's petition should be granted so that ILECs will be forced to load split rated and routed numbers as designated by "that interconnecting carrier", who presumably is a wireless carrier.[23] There is no public policy or legal basis behind CTIA's position and, indeed, none is cited. At the end of the day, CTIA's members simply want land-to-mobile local calling to be determined by

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[19] *In re Numbering Resource Optimization,* 14 FCC Rcd 10322, 10327 at ¶ 8 (1999).
[20] *Id.* at 10353, ¶ 72.
[21] ATIS-0300051.
[22] Public Service Telephone Company v. Georgia Public Service Commission, et. al., 755 F. Supp. 2d at *36 -*37.
[23] *Comments of CTIA* at p. 45.

their LERG entries – a completely unregulated process – despite what the interconnection parties may have agreed to and despite what local calling scopes are set forth in state tariffs. Further, at this time when the Commission seeks to reduce rural ILEC revenues by reducing universal service and intercarrier compensation amounts, the Commission should not increase rural ILEC transport costs by granting Sprint's petition.

As previously discussed, the Commission has already held that interexchange calling routes survive the MTA reciprocal compensation rule for land-to-mobile traffic. CTIA does not discuss that decision, or any other on the subject.

With respect to the guideline that codes must be loaded within a specific time, Section 6.3.3. of ATIS-0300051 states: "A code assigned either directly by the Code Administrator or through transfer from another Code Holder should be placed in service by the applicable activation deadline, that is, six months after the original effective date return on the Part 3 and entered on the ACD screen in BIRRDS." There is no FCC rule or order incorporating this ATIS-0300051 guideline, and there is no reference in ATIS-0300051 that this guideline has been incorporated by the FCC in its rules. In any event, this guideline applies to the Code Holder - in the case of the referenced litigation, Verizon. It does not address the actions of other carriers, like PSTC. Moreover, although the District Court stated that this guideline is to ensure completion of traffic between different providers' customers, the purpose of this guideline is to ensure the efficient use of numbering resources, as is clear from the plain language of Section 6.3. It allows state commissions to "investigate and determine whether service providers have activated their numbering resources and may request proof from all service providers that numbering resources have been activated and assignment of telephone numbers has commenced"

in order to reclaim unused numbering resources. Unlike the first paragraph of Section 6.3.3, this second paragraph has been incorporated in the FCC's rules.[24]

Therefore, the District Court incorrectly interpreted the ATIS Guidelines in a way which gave them the force of federal law.

Conclusion

In sum, both the Georgia Public Service Commission and the District Court erroneously interpreted federal law in allowing Verizon and ALLTEL to establish and maintain Virtual NXX arrangements. That Commission guidance is necessary is evident by the errors as to federal law embedded in this result, and as discussed here. These decisions are part of a larger patchwork of decision makers who have had to struggle with this complex issue in the absence of any FCC ruling on the subject. Accordingly, the Commission should take this opportunity to clarify that the split rating and routing of the NXX codes as set forth in the Commission's July 18, 2002 Public Notice, in fact constitutes a Virtual NXX arrangement, and to establish a fair set of uniform guidelines going forward.

Respectfully submitted,

PUBLIC SERVICE TELEPHONE COMPANY

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[24] *See* 47 C.F.R. § 52.15(i)(2).

ATTACHMENT A

Georgia Public Service Commission

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Docket No. 23803

In Re: **Complaint of Alltel Communications, Inc. Against Public Service Telephone Company to Stop Revocation of Local Dialing Parity by Public Service Telephone Company and for Emergency Relief**

ORDER ON REVIEW OF HEARING OFFICER'S INITIAL DECISION

This matter comes before the Commission upon the Application for Review of the Hearing Officer's Initial Decision filed by Public Service Telephone Company. ("PST"). The Commission adopts the Hearing Officer's Initial Decision for the reasons set forth herein. In addition, the Commission considers PST's Motion for Commission Order to Include Deferred Effective Date. This Motion was not presented to the Hearing Officer. The Commission denies the Motion for the reasons set forth herein.

I. Background

On September 11, 2006, Alltel Communications, Inc. ("Alltel") filed a Complaint against Public Service Telephone Company alleging that PST had threatened to convert into toll calls all of its customers' landline calls to end users of Alltel with a 478-672 NPA-NXX[1] numbering code. (Complaint, p. 2). PST is an incumbent local exchange carrier ("ILEC") and Alltel is a commercial mobile radio service ("CMRS") provider. Alltel alleged that this action would violate federal law, Federal Communications Commission ("FCC") rules and the terms and conditions of the parties' interconnection agreement. On September 29, 2006, PST submitted its Answer, in which it maintained the lawfulness of its intended action, and included counterclaims alleging that Alltel had failed to reciprocally terminate traffic and had failed to return unused telephone numbers. PST subsequently decided not to pursue its second counterclaim. (Tr. 103).

On September 28, 2006, the Commission issued an order stating that PST shall not perform any dialing, rating or routing changes for the 478-672 NPA-NXX until the Commission

[1] The "NPA-NXX" refers to the first six digits of a telephone number.

issues a decision in this matter. On October 2, 2006, the Commission assigned the matter to a Hearing Officer.

A hearing was held on April 19, 2007. Alltel sponsored the testimony of Mr. Ronald Williams, the Vice President – Interconnection and Compliance for Alltel Communications, Inc. PST presented Messrs. Don Bond and Emmanuel Staurulakis. Mr. Bond is a member of PST's Board of Directors and serves as the Chairman of the Board of Public Service Communications. Mr. Staurulakis is President of the telecommunications consulting firm, JSI. It was demonstrated that Alltel acquired PST's wireless affiliate in February, 2005. At the time of acquisition, PST landline customers could make local calls to the 478-672 number block, and calls to this number block were rated and routed to PST's switch at the Roberta, Georgia tandem. After the acquisition, Alltel provided notice to PST of its intent to rehome the 478-672 numbers to Alltel's own facilities. As a result of the rehoming of this number block, calls from third-party carriers originating outside the PST local calling area would be routed to the Alltel facilities for termination to Alltel's customers without first transiting PST's facilities. The parties established a direct point of interconnection on PST's existing network in Macon, Georgia. Prior to the effective date of Alltel's rehome, PST notified Alltel that it would no longer treat calls from its subscribers to the 478-672 number block as local.

After the hearing, briefs were submitted by PST, Alltel and the Consumers' Utility Counsel ("CUC"). CUC supported Alltel's position.

II. Hearing Officer's Initial Decision

The Hearing Officer issued an Initial Decision on December 6, 2007. The Hearing Officer concluded that the Commission has jurisdiction under federal and state law to hear this Complaint. (Initial Decision, p. 5) The Hearing Officer vacated the Commission's September 28, 2006 Order requiring that the parties maintain the status quo until the Commission resolved the issue. *Id.* at 8. The Hearing Officer concluded that as a result of PST's obligation to provide local dialing parity, it must ensure that its customers can make local calls to Alltel subscribers with 478-672 numbers. *Id.* at 5. The Hearing Officer further concluded that Alltel's re-homing of the 478-672 numbers to its own facilities was consistent with industry guidelines and approved by the North American Numbering Plan Administration ("NANPA"). *Id.* at 6. The Hearing Officer rejected PST's arguments that the re-home was not technically and legally proper, and that Alltel failed to provide notice that the re-home was about to occur. *Id.* The Hearing Officer found that such changes are common throughout the industry. *Id.* The Hearing Officer also found that the re-home allowed Alltel to determine the most efficient routing of traffic, and that there was no need to route calls originated by third-party carriers outside PST's exchange area across PST's facilities. *Id.* The Hearing Officer then ordered PST to continue the rating and routing of the 478-672 numbers of Alltel as local calls. *Id.* at 8. The Hearing Officer found that Alltel is within its rights to rehome the 478-672 numbers to its own facilities. *Id.* at 7.

The Hearing Officer found PST's characterization of Alltel's use of its numbering resources as a Virtual NXX to be unpersuasive. The Hearing Officer distinguished this case from Commission Docket No. 14529, in which the Commission rejected a proposed Virtual NXX

arrangement by Global NAPs.[2] The arbitration proceeding in Docket No. 14529 was between two wireline carriers. The Initial Decision explains that 47 C.F.R. §51.701 defines the Major Trading Area ("MTA") as the local calling area between a CMRS provider and an ILEC. (Initial Decision, p. 7). The Hearing Officer determined that the calls at issue in the present case originate and terminate within the same MTA. *Id.* The Hearing Officer did not find that PST offered any compelling evidence to the contrary. *Id.* The Hearing Officer also rejected PST's claims that Alltel was requiring PST to transport its local traffic to distant locations. The Hearing Officer concluded that PST is entitled to deliver local calls from its customers to a Verizon customer over PST's existing network without incurring transport costs from third-parties. *Id.*

The Hearing Officer also rejected PST's counterclaim that alleged Alltel is diverting traffic and denying PST reciprocal compensation to which it is due. The Hearing Officer found that PST failed to show that the reduction in traffic transiting its network resulted from a reduction in Alltel originated traffic, for which PST is entitled to reciprocal compensation. (Initial Decision, p. 7).

III. PST's Application for Review of the Hearing Officer's Initial Decision

On January 4, 2008, PST filed an Application for Review of the Hearing Officer's Initial Decision. On January 10, 2007, PST filed its Brief in Support of its Application for Review. PST argued that the Hearing Officer's conclusion that the Commission had jurisdiction over this Complaint overlooked that the parties' interconnection agreement requires the parties to engage in alternative dispute resolution "as their sole remedy" for disputes arising out of the parties interconnection agreement. (PST Brief in Support of Application, p. 4).

PST also states that the parties' interconnection agreement dictates that the calls from PST's end users to the 478-672 number block be rated as toll. (PST Brief in Support of Application, pp. 5-6). PST further argues that the Initial Decision relies in error on the voluntary Local Exchange Routing Guide ("LERG") guidelines. PST states that the LERG did not require Alltel's rehoming of the 478-672 number block. *Id.* at 10. PST argues that Alltel should not be able to force revenue losses upon PST through the use of voluntary guidelines. *Id.* at 11. PST next argues that Alltel's split rating and routing arrangement creates a Virtual NXX, which the Commission has previously rejected in Docket No. 14529. *Id.*

Finally, PST argues that the Hearing Officer erred in dismissing its counterclaim. PST states that Alltel's defense that the decline in reciprocal compensation was due to third party traffic, as opposed to traffic between Alltel and PST, was not substantiated. (PST Brief in Support of Application, p. 15)

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[2] In Re: Petition for Arbitration of Interconnection Agreement: Global NAPs, Inc. v. Alltel Georgia, Inc. et al.

IV. Alltel's Response

On January 24, 2008, Alltel submitted its Brief in Opposition to PST's Application. Alltel accuses PST of trying to "unnecessarily and unlawfully insert itself into the flow of traffic from carriers delivering calls to Alltel's network in order to collect revenue from those originating carriers . . ." (Opposition, p. 1) Alltel's efficient routing scheme provides that third party traffic does not route through PST facilities. *Id.* at 2. Accordingly, PST does not have any basis to collect access revenues on calls destined to Alltel's network from these third party carriers. *Id.*

Alltel states that PST's arguments on the interconnection agreement are misplaced. Alltel states that the interconnection agreement controls the parties' reciprocal compensation rights and obligations for local traffic. (Opposition, p. 3) Alltel states that its decision to rehome the 478-672 numbers to its facilities rather than to those of PST complies with industry guidelines. *Id.* The rehome did not change the routing or delivery of local traffic originated by PST to Alltel under the interconnection agreement. Before and after the rehome, the parties maintained a direct point of interconnection on PST's network for the purpose of exchanging traffic.

Alltel also responds that PST's Virtual NXX argument overlooks that Docket No. 14529 concerned a competitive local exchange carrier ("CLEC") and Alltel is a wireless provider. (Opposition, p. 4). Alltel further argues that the numbers are assigned to wireless subscribers with a community of interest within PST's local calling area. *Id.* The evidence reflects that Alltel has network infrastructure within the PST service area. *Id.* at 5.

V. Staff Recommendation

The Commission Staff recommended that the Commission adopt the Hearing Officer's Initial Decision, and the recommendation set forth Staff's bases for doing so.

VI. Findings of Fact and Conclusions of Law

A. Jurisdiction

PST waived any jurisdictional argument related to the interconnection agreement's provision identifying alternative dispute resolution as the sole remedy for disputes arising from the interconnection agreement. PST did not raise this jurisdictional argument until its Brief in Support of its Application for Review of the Hearing Officer's Initial Decision. In fact, in its Proposed Order submitted to the Hearing Officer, PST included a section entitled "Jurisdiction." Far from asserting that the interconnection agreement stripped the Commission of jurisdiction, PST affirmatively asserted that the Commission had jurisdiction over telephone and telecommunications service. (PST Proposed Order, p. 1).

A party has waived its arbitration rights if it acts inconsistently with the right, and, in so acting, has prejudiced the other party. USA Payday Cash Advance Center #1, Inc. v. Evans, 281 Ga. App. 847, 849 (2006). PST filed an Answer to Alltel's Complaint, and did not raise any jurisdictional defense. By raising counterclaims in its Answer and by litigating the dispute before the Hearing Officer, PST acted in a way that was inconsistent with its arbitration rights. The

filing of the counterclaim, by itself, is sufficient to conclude that PST waived any jurisdictional argument regarding alternative dispute resolution. It would prejudice Alltel if at this late stage, PST were allowed to have Alltel's dispute dismissed for lack of jurisdiction. Allowing a party to assert its rights for alternative dispute resolution after it sat on those rights until it received an unfavorable Initial Decision would undermine the purpose of alternative dispute resolution. In addition, Alltel seeks relief for violations of federal law that are distinct from the parties' rights under their interconnection agreement.

B. Dialing Parity

All local exchange carriers have the duty "to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays." 47 U.S.C. § 251(b)(3) Pursuant to FCC regulations, "A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider." 47 C.F.R. § 207. The Hearing Officer concluded that PST has an obligation to provide local dialing parity, and that pursuant to this obligation; PST must ensure that its customers can make local calls to Alltel subscribers with 478-672 numbers. (Initial Decision, pp. 5-6)

PST states that in order for it to have the obligation to provide local dialing parity, the call must be local and that there must be the same number of digits required to make a phone call. PST argues that Lizella and Roberta will be local to Macon, and that the other PST exchanges will be toll. PST maintains that Alltel has not established that PST has violated its duty to provide dialing parity for local calls. (PST Brief in Support of Application, p. 8). Alltel responds that all PST rate centers are within the Atlanta MTA, and therefore local and deserving of dialing parity. (Tr. 298)

For the purposes of reciprocal compensation between a LEC and a CMRS provider, the FCC has defined the local calling area to be the MTA. FCC Rule 51.701(b)(2) See Alma Communications Co. v. Missouri Pu. Serv. Comm'n, 490 F.3d 619 (8th Cir. 2007), Atlans Tel. Co. v. Oklahoma Corp. Comm'n, 400 F.3d 1256 (10th Cir. 2005). The Eighth Circuit concluded that, in the absence of any further guidance from the FCC, it did not have any reason to treat dialing parity any different from reciprocal compensation. WWC License, L.L.C., 459 F.3d 880, 892 (2005). The Court reasoned that both reciprocal compensation and dialing parity are Section 251(b) obligations. *Id.* PST argues that the decisions relied upon by the Hearing Officer are not from the Eleventh Circuit. (Brief in Support of Application, p. 3). Although these decisions are from different circuits, the Commission may still consider them persuasive authority.

PST also referenced the FCC's issuance of a Public Notice on the split rating and routing. The public notice was in response to the Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92 (May 9, 2002) ("Sprint

Petition").[3] Alltel responded by stating that (1) the FCC has not acted to prohibit the split rating and routing in the five years that the Petition has been pending and (2) BellSouth conceded that a direct point of interconnection ("POI") between a CMRS carrier and a rural ILEC would resolve the issue. (Alltel Post-Hearing Brief, p. 13) In the dispute before the Commission, Alltel has established a direct point of interconnection on PST's network. *Id.* In fact, Alltel witness, Ron Williams, testified that Alltel offered to continue to use the existing Roberta POI as the direct interconnection point between the parties, but that PST insisted upon the POI being located on PST's network in Macon. (Tr. 35). Mr. Williams testified that Alltel agreed to the Macon POI at PST's insistence. (Tr. 135). Therefore, even though the rating and routing points of the traffic to Alltel numbers are different, PST will only have to deliver the traffic to Alltel's 478-672 numbers at a POI that is on the PST network.

The Commission finds the reasoning supporting the conclusions drawn by the Eighth and the Tenth Circuits to be compelling. Both reciprocal compensation and dialing parity are Section 251(b) obligations. For calls between a LEC and a CMRS provider, the FCC has defined the local calling area as the MTA for purposes of reciprocal compensation. There is no apparent reason to depart from the MTA as the local calling area for purposes of dialing parity. The FCC has not yet ruled on the Sprint Petition. As always, the Commission may review any FCC orders issued subsequent to its order in this case to determine whether it alters the outcome. The relief ordered by the Commission in this case is not inconsistent with any action the FCC has taken of this date. Moreover, it is not clear that the facts involved in the Sprint Petition are comparable to the present case in which Alltel has agreed to establish a POI in Macon on PST's network. The Commission action is consistent with the decisions of the Eighth and Tenth Circuits cited herein.

PST also argues that the parties' interconnection agreement establishes that Alltel is not entitled to the dialing patterns it has requested. (Brief in Support of Application, p. 6). PST relies on Section IV(B)(3) of the parties' interconnection agreement. However, this section does not provide that calls from PST end users to the 478-672 number block should be treated as toll. This section of the agreement is set forth below in its entirety:

> As it relates to whether a call is treated as a toll call or is included as part of the local exchange service for calls in the ILEC's local calling area and without prejudice to the ILEC's position that it has no legal obligation to do so, the ILEC agrees to rate its end users' originated calls to CMRS Carrier end users the same way it rates its end users' calls to another wireline carrier's end users, when the CMRS Carrier's end users have a telephone number associated with the same rate center as that of the other wireline carrier. Thus, if the ILEC's end user's call to another incumbent carrier's NPA NXX rate center code is rated and dialed as a local call, then for purposes of the ILEC's end user's calls to CMRS Carrier end users with numbers associated with that same rate center, the ILEC will treat those calls as local for purpose of its end-user dialing and when billing its

[3] Sprint Petition for Declaratory Ruling on Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Docket No. 01-92

end users. ILEC shall perform all necessary translations at its own expense to provide its end users the dialing and rate treatment to call a CMRS assigned NPA NXX as described. This compromise for the purpose of this agreement in no way prejudices any position the Parties may take on this matter with respect to future agreements or regulatory or legislative proceedings.

The first sentence of this paragraph establishes that PST will not discriminate against Alltel's customers in terms of whether a call is rated as local or toll. This sentence obligates PST to treat calls from its end users to Alltel's end users the same as it treats calls to another wireline carrier's end users, provided that the numbers of Alltel's end users are associated with the same rate center as the wireline carrier's customer. PST construes this paragraph to set up the following two prong test:

1) the ILEC's (PSTC's) end user's call to another incumbent carrier's NPA-NXX rate center code (e.g., BellSouth's NPA-NXXs in Macon) is rated and dialed as a local call; and

2) the CMRS carrier's end users must have numbers associated with such (e.g., BellSouth's) rate center. Id. pp. 4-5.

(PST Brief in Support of Application, p 5). PST argues that a call to an Alltel customer with the 478-672 NPA-NXX does not pass the second component of this two-prong test because the Alltel customer would not have a number associated with the Macon rate center. *Id.* at 6. However, the 478-672 NPA-NXX is associated with PST's local calling area. Section IV(B)(3) discusses the rating of calls, not the routing. The fact that the call from the PST end user is routed through Macon does not impact the analysis under this section of the parties' interconnection agreement. A call from a PST end user to a wireline customer with a telephone number associated with the Roberta rate center would be a local call. Therefore, a call from a PST end user to an Alltel customer with a 478-672 NPA-NXX should also be rated as local.

C. Virtual NXX

There are two issues within Virtual NXX. The first issue is whether the facts of the present case are distinguishable from the facts in Docket No. 14529, in which the Commission rejected a Virtual NXX arrangement. To resolve this question, it is necessary to determine whether it makes a difference that Alltel is a wireless provider, while Global NAPs was a CLEC. The Commission concludes that the difference is pivotal because FCC Rule 51.701(b)(2) defines the local calling area as the MTA for calls between a LEC and a CMRS provider for purposes of reciprocal compensation. As discussed in the Section VI.B. of this Order, the reasoning in support of the decisions from the Eighth and Tenth Circuits for establishing the MTA as the local calling area for dialing parity is compelling as well.

For purposes of comparison between the Commission order in Docket No. 14529 and the present case, the significance of the local calling area for CMRS providers being the MTA is apparent by a review of the Commission order in Docket 14529. In Docket No. 14529, the Commission identified the issue as being "whether a call that originates in one local calling area

and terminates in another is due reciprocal compensation." (Docket No. 14529, *Order on Disputed Issues*, p. 8). The Commission answered this question in the negative. In other words, in Docket No. 14529, a premise for the analysis was that the call did not originate and terminate in the same local calling area. The same is not the case in the present dispute. In Docket No. 14529, the proposed Virtual NXX arrangement would have required the ILEC to deliver calls beyond its existing network. (Tr. 44). Again, the same is not true for the dialing pattern requested by Alltel in this case because, pursuant to PST's own election, PST delivers the calls to its existing network in Macon. (Tr. 44).

The second issue then is whether the evidence reflects that the wireless numbers are assigned to subscribers within that MTA. All PST rate centers are within the MTA. (Tr. 298) Alltel witness, Mr. Williams, testified that Alltel's subscribers are customers "who live, work and play in the PSTC Local Calling Area who expect to receive calls from PSTC customers." (Tr. 27-28). In fact, most of the subscribers with the 478-672 NPA-NXX are Roberta residents who were assigned that 478-672 NPA-NXX by PST's wireless affiliate. (Tr. 43-44). PST did not present persuasive evidence that Mr. Williams' assertion was not accurate.

Unlike the scenario addressed by the Commission in its prior dockets in which it rejected Virtual NXX arrangements, Alltel's proposed NPA-NXX assignment does not ignore the geographic location of the calling parties. Of course, it is possible that a PST wireline customer may call an Alltel wireless customer who has temporarily traveled outside that customer's community of interest, and the call would still be treated as local. However, that is the nature of wireless communications. Denying Alltel's request based on such logic would mean that no CMRS customer would ever have a local calling scope. In addition, the converse of the scenario described herein also may occur. That is, a CMRS customer who resides and works outside of PST's territory may temporarily travel into PST's territory. If that customer were to receive a call from a PST wireline customer during that time, the call would generate access fees for PST, even though the customers were within the same geographic area at the time of the call.

Alltel's rehome did not result in a Virtual NXX arrangement comparable to what the Commission rejected in Docket Nos. 13542[4] and 14529. Again, unlike Global NAPs, this case does not involve the transport of calls outside the ILEC's network. Alltel has borne its costs of interconnecting directly with the ILEC (in this case PST), at a technically feasible point of interconnection recommended by PST on its own network (Macon), as prescribed in 47 U.S.C. 251(c)(2)(B). The calls originated and terminated with the same MTA, and PST is not required to transport calls to the 478-672 NPA-NXX outside its network.

D. Significance of the LERG

The parties agree that the LERG is a set of guidelines, and that parties can agree to vary from it. Alltel's request to change the ultimate routing of calls to its 478-672 NPA-NXX from PST's facilities to Alltel's own facilities was approved by the North American Numbering Plan Administration. (Tr. 88, Alltel Exhibit 6). PST did not argue that Alltel's rehome violated the

[4] In Re: Generic Proceeding on Point of Interconnection and Virtual FX Issues.

voluntary guidelines, only that the LERG did not require the rehome. (PST Post-Hearing Brief, pp. 13-14).

At issue with Alltel's complaint is whether a call from a PST wireline customer to an Alltel customer with the 478-672 number should be rated as local or toll. As discussed above, PST has an obligation to provide dialing parity under federal law and the parties' interconnection agreement, the terms of the interconnection agreement provide that such a call should be rated local, and the rating and routing arrangement proposed by Alltel is not a Virtual NXX arrangement. Therefore, the LERG is significant to examine whether Alltel's rehome was in any way contrary to industry guidelines or standard practices in order to determine whether such inconsistency would constitute any grounds to deny the dialing pattern requested by Alltel. The question is not whether the LERG mandates the practice, but whether the practice is consistent with the LERG. The evidence reflects overwhelmingly that the practice is consistent with the LERG. Not only did Alltel introduce the NANPA's approval of the rehome into evidence, but PST witnesses Mr. Don Bond and Emmanuel Staurulakis each testified that the rehome was not prohibited. (Tr. 139, 197). The LERG does not provide any ground for PST to refuse to rate as local calls from its end users to Alltel's customers with the 478-672 NPA-NXX. To the contrary, the LERG supports Alltel's position that the rehome should not have any effect on the rating of the call.

FCC Rule 20.11(a) provides, in relevant part, as follows: "A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable." In this instance, PST's own witness, Mr. Bond, admitted that the rehoming of the numbers to the Alltel facilities did not require PST to do anything to its network to facilitate the rehome or to incur any additional costs. (Tr. 131) The only harm incurred by PST is that it is not going to receive access revenues from the third party calls to Alltel that will no longer transit PST's network. PST is not entitled to these revenues, and the fact that it will not continue to receive these revenues does not render the interconnection with Alltel economically unreasonable. Alltel's rating and routing arrangement is technically feasible and economically reasonable.

E. PST's counterclaim

In its counterclaim, PST asserted that Alltel wrongfully diverted traffic and deprived it of reciprocal compensation payments for which PST is due. (PST Post-Hearing Brief, p. 16). The originating carrier owes reciprocal compensation to the terminating carrier. 47 C.F.R. 51.703. Mr. Bond presented testimony in an effort to demonstrate that Alltel diverted traffic away from PST that originated on Alltel's network. Schedule 3 to Mr. Bond's testimony included two columns.[5] One column set forth the number of minutes that originated on Alltel's network and terminated on PST's network from July 1, 2006 through October 31, 2006. Mr. Bond agreed that Alltel owed PST reciprocal compensation for these calls. (Tr. 150-51). Mr. Bond also agreed with counsel for Alltel that the number of minutes per day that Alltel was sending PST after the

[5] Schedule 3 to Mr. Bond's testimony was designated "Trade Secret." Therefore, this Order will not set forth the specific number of minutes that were included in the schedule.

rehome did not change very drastically from the number of minutes that Alltel was sending PST before the rehome. (Tr. 157). Again on re-cross examination, Mr. Bond acknowledged that the number of minutes subject to reciprocal compensation payments from Alltel to PST did not change significantly after the rehome. (Tr. 183). Based on this Schedule and PST's acknowledgement that there was not a drastic reduction in the number of minutes sent by Alltel to PST after the rehome, the Commission finds that the column of Schedule 3 that sets forth the number of minutes that Alltel sent to PST does not support PST's claim that Alltel diverted traffic away from PST to deprive PST of reciprocal compensation.

The second column on Schedule 3 that was discussed during cross-examination included traffic that PST customers originated and sent to Alltel. (Tr. 158). This second column also possibly included third party traffic to Alltel. (Tr. 158). This column did not separate the third party traffic from the traffic that originated on PST's network. (Tr. 158). The number of minutes in this second column dramatically declined after the rehome. (Tr. 158). Because this column does not separate the traffic by originating carrier, it is not possible to discern whether the decline is due to a reduction in third party traffic only or whether the traffic is due to a reduction in traffic originating on PST's network as well. Given that the rehome allowed the delivery of third party traffic to Alltel's network without transiting PST's network, it is logical to conclude that the reduction in minutes is due primarily to the reduction in third party traffic. Either way, however, PST is not due reciprocal compensation for calls that terminate on Alltel's network, regardless of whether the call originates on PST's network or the network of another carrier. Therefore, the reduction in the minutes being delivered to Alltel reflected in this second column on Schedule 3 does not support a claim that Alltel is diverting traffic away from PST and depriving it of reciprocal compensation payments. Moreover, even if the traffic could be separately identified, the reduction in these minutes would not support such a claim. As Mr. Bond acknowledged under cross-examination, Alltel does not pay PST for traffic that PST originated. (Tr. 161).

Given PST's admission that the amount of traffic that Alltel sends to PST that is subject to reciprocal compensation has not significantly changed as a result of the rehome, PST has not demonstrated that Alltel is wrongfully diverting traffic to deprive PST of reciprocal compensation payments. Instead, Alltel argued persuasively that the decline in minutes after the rehome resulted from the fact that third party calls no longer had to transit the PST network in order to terminate to an Alltel end user. (Alltel Post-Hearing Brief, pp. 17-18). Prior to the rehome, PST collected revenues from the third party carriers in connection with these calls. *Id.* at 17. Alltel does not owe PST reciprocal compensation in connection with these calls.

VII. PST's Motion for Commission Order to Include Deferred Effective Date

A. PST's Motion

On March 7, 2008, PST filed with the Commission a Motion for Commission Order to Include Deferred Effective Date. In its Motion, PST requested that the Commission state that its order will not become effective until ten (10) business days after the Order is reduced to writing and signed by the Chairman and Executive Secretary of the Commission. (Motion, p. 2). PST

states that the reasons behind this request are to avoid ancillary litigation over procedural issues and to provide the State Attorney General five days written notice. *Id.*

B. Alltel's Response

On March 12, 2008, Alltel filed a response in opposition to the PST's Motion. Alltel stated that compliance with the Commission order continued the status quo, and that therefore, it was not necessary or appropriate to delay the effective date of the Commission order. (Response, p. 1). Alltel stated that delaying the effective date of the order could have the unintended consequence of altering the status quo. *Id.* at 2.

C. Staff Recommendation

Staff recommended that the Commission deny PST's Motion. Staff distinguished this docket from the Docket No. 24752, involving the dispute between PST and Verizon. Unlike in Docket No. 24752, the Commission's adoption of the Hearing Officer's Initial Decision in this docket preserves the status quo. PST has not demonstrated a need to delay the effective date of the Commission's order in this docket.

D. Discussion

The Commission adopts Staff's recommendation. There is no need to delay the effective date of the Commission order in this docket, given that the order maintains the status quo.

VIII. Conclusion and Ordering Paragraphs

The Commission finds and concludes that the issues presented to the Commission for decision should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to the applicable federal law, Georgia law and Commission Rules.

WHEREFORE IT IS ORDERED, that the Commission hereby adopts the Initial Decision issued by the Hearing Officer.

ORDERED FURTHER, that the Commission "Standstill" Order of September 28, 2006 is hereby vacated.

ORDERED FURTHER, that PST shall continue the rating and routing of the 478-672 numbers of Alltel as local calls.

ORDERED FURTHER, that the Commission denies PST's Motion for Commission Order to Include Deferred Effective Date.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 21st day of February, 2008.

Reece McAlister
Executive Secretary

Date: 4-4-08

Chuck Eaton
Chairman

Date: 4/4/08

Georgia Public Service Commission

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

Docket No. 24752

In Re: Request for Emergency Relief Filed by Verizon Wireless

ORDER ON REVIEW OF HEARING OFFICER'S INITIAL DECISION

This matter comes before the Georgia Public Service Commission ("Commission") upon the Application for Review of the Hearing Officer's Initial Decision filed by Public Service Telephone Company ("PST"). The Commission adopts the Hearing Officer's Initial Decision for the reasons set forth herein. In addition, the Commission considers PST's Motion for Commission Order to Include Deferred Effective Date. This Motion was not presented to the Hearing Officer. For the reasons set forth herein, the Commission grants a modified version of the relief sought by PST in its Motion.

I. Background

On February 28, 2007, Verizon Wireless ("Verizon") filed a Request for Emergency Relief asking the Commission to enter an order requiring Public Service Telephone Company to load Verizon's 478-391 NPA-NXX[1] numbering code.

PST is an incumbent local exchange carrier ("ILEC") and Verizon is a Commercial Mobile Radio Service ("CMRS") provider. Pursuant to their interconnection agreements, and at the request of PST, the parties' interconnected their networks in Macon, Georgia. On August 9, 2006, Verizon notified PST that it intended to obtain the 478-391 NPA-NXX code (associated with PST's Reynolds rate center) from the North American Numbering Plan Administrator. Verizon proposed that it be allowed to establish the Macon tandem of BellSouth Telecommunications, Inc.'s d/b/a AT&T Georgia, d/b/a AT&T Southeast ("AT&T") as the homing tandem in the Local Exchange Routing Guide ("LERG") for this new Reynolds NPA-NXX code. PST responded that this proposal was a Virtual NXX arrangement, and it refused to load the numbers.

[1] The "NPA-NXX" refers to the first six digits of a telephone number.

A rate center is the geographic area used to distinguish rate boundaries. (Tr. 29). Verizon's proposed rating point for the 478-391 NXX code is the Reynolds rate center. (Tr. 29). Verizon proposes that calls to this NXX code to be routed through AT&T's Macon tandem, and that AT&T route the calls to Verizon's Macon switch via interconnecting trunks. (Tr. 30).

The Commission conducted an evidentiary hearing on March 22, 2007, at which both Verizon and Public Service presented live witnesses and argument. Verizon sponsored the testimony of Ms. Dana Smith, Member of Technical Staff in the Numbering Policy & Standards group within Network Compliance at Verizon Wireless, and Mr. Marc Sterling, contract negotiator. PST presented Mr. Don Bond, who is a member of PST's Board of Directors and serves as the Chairman of the Board of Public Service Communications, and Mr. Emmanuel Staurulakis, who is President of the telecommunications consulting firm, JSI. Pursuant to the Procedural and Scheduling Order, the March 22, 2007 hearing was limited to a determination as to whether there is "an emergency affecting public health, safety and welfare" and, if so, what "appropriate interim solution" should be ordered. The Commission determined that Verizon had not demonstrated "an emergency affecting public health, safety and welfare." The Commission assigned this matter to a Hearing Officer. A hearing was held on April 19, 2007 on the merits. At the hearing on the merits, Verizon presented Mr. Gregory Cole, contract negotiator, and Mr. Sterling as witnesses. PST presented Ms. Deborah Nobles, Vice President of Regulatory Affairs with Townes Telecommunications Services Corporation, in addition to Messrs. Bond and Staurulakis. Subsequent to the hearing, both PST and Verizon submitted briefs on the merits.

II. Hearing Officer's Initial Decision

The Hearing Officer issued an Initial Decision on December 6, 2007. The Hearing Officer concluded that the Commission has jurisdiction under federal and state law to hear this Complaint. (Initial Decision, p. 6) The Hearing Officer ordered PST to immediately load Verizon's 478-391 NPA-NXX code. *Id.* at 7. The Hearing Officer further ordered that PST shall not impede or interrupt the rating and routing of calls as proposed by Verizon for the 478-391 NPA-NXX code, and that PST shall provide local dialing parity for such calls. *Id.*

The Hearing Officer found that Verizon was not seeking to force PST to transport calls outside of PST's network. (Initial Decision, p. 6). The Hearing Officer also found that PST's refusal to load Verizon's 478-391 NPA-NXX code violates standard industry guidelines. *Id.* The Hearing Officer concluded that the parties' interconnection agreement authorized the rating and routing proposed by Verizon. *Id.* The Hearing Officer concluded that PST's position was contrary to federal law. Specifically, it would violate 47 U.S.C. § 251(b)(3) and (5) and 47 C.F.R. §§ 51.207 and 701(b)(2) to require local intra-MTA calls to Verizon customers to traverse PST's network so as to permit PST to collect access charges. *Id.* The Hearing Officer further found that there was no need for calls to Verizon customers in PST's area originated by IXCs and other third parties to route through PST's network in order to terminate to Verizon's customers. *Id.* at 7. The Initial Decision also provides that in order to comply with the local dialing parity requirements of 47 C.F.R. § 207, it is necessary for PST to load Verizon's 478-391 NPA-NXX. The Hearing Officer rejected PST's characterization of Verizon's proposed rating and routing arrangement as Virtual NXX because this case is distinguishable from the earlier

Commission dockets that involved competitive local exchange carrier traffic as opposed to CMRS provider traffic. *Id.* Finally, the Hearing Officer found that Verizon's request for Type 2 interconnection is technically feasible and economically reasonable. *Id.*

III. PST's Application for Review of the Hearing Officer's Initial Decision

On January 4, 2008, PST filed an Application for Review of the Hearing Officer's Initial Decision. On January 10, 2008, PST filed its Brief in Support of its Application for Review. PST argued that the Hearing Officer's conclusion that the Commission had jurisdiction over this Complaint overlooked that the parties' interconnection agreement requires the parties to engage in alternative dispute resolution "as their sole remedy" for disputes arising out of the parties' interconnection agreement. (PST Brief in Support of Application, p. 3).

PST also states that the Hearing Officer erred by determining that the parties' interconnection agreement permitted the split rating/routing arrangement proposed by Verizon. (PST Brief in Support of Application, p. 5). PST argues that Section IV(B)(3) of the parties' agreement ties the dialing parity obligation to "1) whether calls from PST's customers to an adjacent ILEC's customers are dialed as local, and 2) whether Verizon has numbers that are local to the adjacent ILEC's exchange." *Id.* at 6. PST claims that Verizon's split rating/routing arrangement is designed to violate the parties' interconnection agreement's dialing parity provisions. *Id.* at 7. PST points out that five of the seven PST rate centers do not have local calling into Macon. *Id.* at. 6. PST further argues that the Initial Decision's reliance on the standard industry guidelines cannot be a basis for a ruling because the guidelines are voluntary. *Id.* at 7.

PST criticizes the Initial Decision for relying on cases that concern reciprocal compensation to a wireless provider, without considering the terms of the parties' interconnection agreement. (Brief in Support of Application, p. 9). PST also points out that the cases relied upon by the Hearing Officer for the proposition that PST is in violation of its dialing parity obligations are not from the Eleventh Circuit. *Id.*

PST next argues that the Hearing Officer erred in his determination that Verizon's split rating and routing arrangement is not comparable to the Virtual NXX arrangement that the Commission rejected in Docket Nos. 13542[2] and 14529.[3]

IV. Verizon's Response

On January 16, 2008, Verizon submitted its Response to the Application of PST for Commission Review of the Initial Decision. Verizon states that PST fails to recognize "(i) that Verizon Wireless has a Federal Communications Commission ("FCC") license to provide

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[2] In Re: Generic Proceeding on Point of Interconnection and Virtual FX Issues.

[3] In Re: Petition for Arbitration of Interconnection Agreement: Global NAPs, Inc. v. Alltel Georgia, Inc. et al.

wireless service in that same geographic area (ii) that Verizon Wireless' use of the Macon tandem as the homing tandem for its 478-391 Reynolds-rated NPA-NXX code does not prevent PSTC from routing its originated calls to Verizon Wireless via the existing direct connection between PSTC and Verizon Wireless, and (iii) that calls originating on third party networks to Verizon Wireless customers who are assigned mobile numbers from within the 478-391 code do not terminate on, and are not required to pass through, PST's network." (Response, pp. 1-2)

Verizon states that PST's jurisdictional arguments should be rejected because PST agreed to the procedures and because the dispute does not arise out of the parties' interconnection agreements. (Response, p. 3). Beyond these points, Verizon stated that it would rest on its prior pleadings in this case.

V. Staff Recommendation

The Commission Staff recommended that the Commission adopt the Hearing Officer's Initial Decision, and the recommendation set forth Staff's bases for doing so.

VI. Findings of Fact and Conclusions of Law

A. Jurisdiction

PST waived any jurisdictional argument related to the interconnection agreement's provision identifying alternative dispute resolution as the sole remedy for disputes arising from the interconnection agreement. Along with Verizon, PST filed a Joint Petition for Revised Procedural Schedule in which it requested that the Commission resolve the dispute after hearings. A party has waived its arbitration rights if it acts inconsistently with the right, and, in so acting, has prejudiced the other party. USA Payday Cash Advance Center #1, Inc. v. Evans, 281 Ga. App. 847, 849 (2006). By submitting a proposed procedural schedule to the Commission requesting that the Commission resolve the issues in the dispute, and by litigating the dispute before the Hearing Officer, PST acted in a way that was inconsistent with its arbitration rights. PST did not move to dismiss Verizon's complaint for lack of Commission jurisdiction. It would prejudice Verizon if at this late stage, PST were allowed to have Verizon's dispute dismissed for that reason.

In addition, Verizon seeks relief for violations of federal law that are distinct from the parties' rights under their interconnection agreement. In its February 28, 2007, Request for Emergency Relief, Verizon states that this issue does not arise under the interconnection agreement. (Emergency Request, p. 2). Verizon argues that PST's refusal to load codes conflicts with industry standards and is in violation of its obligation under federal law to provide dialing parity.

The provision for alternative dispute resolution only applies to disputes that arise from the parties' interconnection agreements. (Interconnection Agreement, Section VIII.B.). Verizon's pleadings demonstrate that the dispute does not arise from the interconnection agreement. Therefore, even had the jurisdictional issue not been waived by PST, the interconnection

agreement still would not have required Verizon to seek alternative dispute resolution prior to seeking relief from the Commission.

B. Dialing Parity

All local exchange carriers have the duty "to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays." 47 U.S.C. § 251(b)(3). Pursuant to FCC regulations, "A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider." 47 C.F.R. § 207.

For the purposes of reciprocal compensation between a LEC and a CMRS provider, the FCC has defined the local calling area to be the Major Trading Area ("MTA"). FCC Rule 51.701(b)(2) See Alma Communications Co. v. Missouri Pub. Serv. Comm'n, 490 F.3d 619 (8th Cir. 2007), Atlas Tel. Co. v. Oklahoma Corp. Comm'n, 400 F.3d 1256 (10th Cir. 2005). The Eighth Circuit concluded that, in the absence of any further guidance from the FCC, it did not have any reason to treat dialing parity any different from reciprocal compensation. WWC License, L.L.C., 459 F.3d 880, 892 (2005). The Court reasoned that both reciprocal compensation and dialing parity are Section 251(b) obligations. *Id.* PST argues that the decisions relied upon by the Hearing Officer are not from the Eleventh Circuit. (Application, p. 9). Although these decisions are from different circuits, the Commission may still consider them persuasive authority.

The reasoning supporting the conclusions drawn by the Eighth and the Tenth Circuits is compelling. Both reciprocal compensation and dialing parity are Section 251(b) obligations. For calls between a LEC and a CMRS provider, the FCC has defined the local calling area as the MTA for purposes of reciprocal compensation. There is no apparent reason to depart from the MTA as the local calling area for purposes of dialing parity.

PST also referenced the Public Notice issued by the FCC in response to the Sprint Declaratory Ruling Regarding the Rating and Routing of Traffic by ILECs.[4] (PST Post-Hearing Brief, p. 8). PST states that the FCC sought comment on a Declaratory Ruling petition filed by Sprint PCS, regarding the failure to load a Sprint NPA-NXX code. *Id.* Related to this issue, PST sponsored the testimony of Ms. Deborah Nobles, who is the Vice President of Regulatory Affairs with Townes Telecommunications Services Corporation ("TTSC"). TTSC is an affiliate of Northeast Florida Telephone Company ("NEFCOM"). (Tr. 307). NEFCOM was involved in the dispute involving BellSouth and Sprint PCS. Ms. Nobles testified that Sprint PCS had not negotiated an interconnection agreement with NEFCOM to address how the traffic between NEFCOM's landline customers and the wireless customers of Sprint PCS with the 904-408

[4] Sprint Petition for Declaratory Ruling on Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Docket No. 01-92

NPA-NXX would be exchanged when the rating center was different than the routing center. (Tr. 308). Therefore, NEFCOM did not open up the code for the central office for which Sprint PCS rate centered its 904-408 NPA-NXX. (Tr. 308). Verizon responds that BellSouth submitted a filing in that case clarifying that it loaded all of Sprint PCS's numbers with the routing and rating points designated by Sprint. (Verizon Post-Hearing Brief, p. 8). Moreover, that the FCC has not yet ruled upon Sprint's PCS's petition does not relieve PST either of its statutory obligation to provide indirect interconnection or its contractual obligation to Verizon to route traffic directly or indirectly and afford Verizon rating parity. *Id.* Finally, PST witness, Mr. Staurulakis, testified that NEFCOM is the only telephone company that he is aware that has refused to load the codes under the factual circumstances in this case. (Tr. 223). JSI, of which Mr. Staurulakis is President, provides services to incumbent local exchange carriers in as many as 43 states. (Tr. 221).

The Commission concludes that the dispute involving Sprint PCS does not provide any reason to depart from the reasoning advanced in the decisions of the Eighth and Tenth circuits. The FCC has not yet ruled on the Sprint petition. As always, the Commission may review any FCC orders issued subsequent to its order in this case to determine whether it alters the outcome. In addition, given that BellSouth ultimately loaded the codes with respect to the Sprint PCS matter, that case is significantly different from the dispute before the Commission in which PST has continued to refuse to load the codes requested by Verizon. The Commission action is consistent with the decisions of the Eighth and Tenth Circuits cited herein.

Next, PST argues that these federal court decisions should not override the parties' interconnection agreement. (PST Brief in Support of Application, p. 9). The initial question then is whether the relief sought by Verizon is in any way inconsistent with the terms of the parties' interconnection agreement. Section IV(B)(3) of the parties' interconnection agreement provides as follows:

> As it relates to whether a call is treated as a toll call or is included as part of the local exchange service for calls in the ILEC's local calling area and without prejudice to the ILEC's position that it has no legal obligation to do so, the ILEC agrees to rate its end users' originated calls to CMRS Carrier end users the same way it rates its end users' calls to another wireline carrier's end users, when the CMRS Carrier's end users have a telephone number associated with the same rate center as that of the other wireline carrier. Thus, if the ILEC's end user's call to another incumbent carrier's NPA NXX rate center code is rated and dialed as a local call, then for purposes of the ILEC's end user's calls to CMRS Carrier end users with numbers associated with that same rate center, the ILEC will treat those calls as local for purpose of its end-user dialing and when billing its end users. ILEC shall perform all necessary translations at its own expense to provide its end users the dialing and rate treatment to call a CMRS assigned NPA NXX as described. This compromise for the purpose of this agreement in no way prejudices any position the Parties may take on this matter with respect to future agreements or regulatory or legislative proceedings.

The first sentence of this paragraph establishes that PST shall not discriminate against Verizon's customers in terms of whether a call is rated as local or toll. This sentence obligates PST to treat calls from its end users to Verizon's end users the same as it treats calls to another

wireline carrier's end users, provided that the numbers of Verizon's end users are associated with the same rate center as the wireline carrier's customer. Section IV(B)(3) discusses the rating of calls, not the routing. The fact that the call from the PST end user is routed through Macon does not impact the analysis under this section of the parties' interconnection agreement. A call from a PST end user to a wireline customer with a telephone number associated with the Reynolds rate center would be a local call. Therefore, a call from a PST end user to a Verizon customer with a 478-391 NPA-NXX, or any other wire center located within the Public Service territory for that matter, should also be rated as local pursuant to the terms of the interconnection agreement.

The Initial Decision does not construe the decisions of the Eight and Tenth Circuits to override the parties' interconnection agreement. Neither the two Circuit Court decisions nor the Hearing Officer's Initial Decision are inconsistent with the parties' interconnection agreement. Atlas Tel. Co. and WWC License, L.L.C. together stand for the proposition that, until the FCC orders otherwise, it is reasonable to define the local calling area for calls between wireline and wireless customers as the MTA for purposes of dialing parity. Contrary to PST's apparent position, the application of section IV(B)(3) of the parties' interconnection agreement to the facts of this case does not provide otherwise. Furthermore, nothing in the interconnection agreement provides that the existence of a direct interconnection between the parties precludes the exchange of traffic via indirect interconnection. Verizon witness, Mr. Sterling, explained that the direct interconnection point currently does not have enough capacity to handle all of the traffic between the two parties, but that Verizon has evaluated the possibility of augmenting the direct interconnection to achieve that end. (Tr. 107).

The Commission concludes that the Hearing Officer's Initial Decision is consistent with federal law and the parties' interconnection agreement. The Commission is not reaching the conclusion that the parties could not agree to terms and conditions that depart from their respective obligations under federal law. To the contrary, the Commission finds that nothing in the interconnection agreement prohibits the rating and routing proposed by Verizon.

C. Virtual NXX

The parties agree that the term "Virtual NXX" describes the practice of offering telephone numbers as local numbers when the network of the called party is outside the local calling scope of the originating landline caller. (Tr. 70, 213). There are two issues within Virtual NXX. The first question is whether the factual differences between the present case and the prior Commission dockets referenced by PST, Docket Nos. 13542 and 14529, impact the analysis. In those prior dockets, the Commission rejected Virtual NXX arrangements in the context of wireline competitive LECs. To resolve this question then, it is necessary to determine whether it makes a difference that Verizon is a wireless provider, while Global NAPs was a competitive LEC. For traffic between wireline providers, the FCC has concluded that state commissions have the authority to determine the geographic areas that should be considered local for the purpose of applying reciprocal compensation obligations under section 251(b)(5). (*Local Competition Order*[5], ¶ 1035). In Docket No. 14529, the Commission used the incumbent LEC's local calling

[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 RCD 15499 (1996) ("*Local Competition Order*")

area for purposes of reciprocal compensation. (Order on Disputed Issues, p. 8). FCC Rule 51.701(b)(2) defines the local calling area as the MTA for calls between a LEC and a CMRS provider for purposes of reciprocal compensation. As discussed above, consistent with the reasoning employed by the Eighth and Tenth circuits, the Commission has determined that it is reasonable to define the local calling area for dialing parity in the same manner until otherwise instructed by the FCC. The fact that, unlike in Docket Nos. 13542 and 14529, the Commission is addressing calls to a wireless provider is pivotal to the analysis. The LEC's local calling area does not dictate the local calling area in the context of calls to wireless providers.

The second question is whether the evidence reflects that the wireless numbers are assigned to subscribers within that MTA. The geographic location of the parties to the call is still relevant. Verizon presented the testimony of Mr. Gregory Cole, Contract Negotiator for Verizon. Mr. Cole testified that Verizon uses locally rated numbers to serve customers in the PST local calling area with several direct retail stores located in communities of interest that are in close proximity to the PST stores. (Tr. 248) In addition, Verizon has indirect retail stores located within PST's local service area. Mr. Cole testified that a locally rated telephone number is more important to customers than providing them with toll free calling. (Tr. 249). PST did not present persuasive evidence that Mr. Cole's assertion was not accurate. On cross-examination, Mr. Cole stated it as "highly unlikely" that a customer would request a Reynolds number, unless that person had a community of interest in that area. (Tr. 253). The Commission finds this testimony credible. It is logical that customers would request numbers within their community of interest. The Commission concludes that the evidence reflects that the numbers would be assigned to customers with community of interests within the MTA. Therefore, the Virtual NXX concerns raised by PST do not have any merit.

Unlike the scenario addressed by the Commission in its prior dockets in which it rejected Virtual NXX arrangements, Verizon's proposed NPA-NXX assignment does not ignore the geographic location of the calling parties. Of course, it is possible that a PST wireline customer may call a Verizon wireless customer who has temporarily traveled outside that customer's community of interest, and the call would still be treated as local. However, that is the nature of wireless communications. As Verizon points out in its brief, denying its request based on such logic would mean that no CMRS customer would ever have a local calling scope. (Verizon Post-Hearing Brief, p. 13). In addition, the converse of the scenario described herein also may occur. That is, a CMRS customer who resides and works outside of PST's territory may temporarily travel into PST's territory. If that customer were to receive a call from a PST wireline customer during that time, the call would generate access fees for PST, even though the customers were within the same geographic area at the time of the call. *Id.* PST witness, Mr. Staurulakis, agreed that PST would receive terminating access from such a call. (Tr. 220-21).

Verizon's rehome, in which calls to numbers associated with the Reynolds rate center are routed through BellSouth's Macon tandem, did not result in a Virtual NXX arrangement comparable to what the Commission rejected in Docket Nos. 13542 and 14529. Unlike Global NAPs, this case does not involve the transport of calls outside the incumbent LEC's network. Verizon has borne its costs of interconnecting directly with the ILEC (in this case PST), at a technically feasible point of interconnection recommended by PST on its own network (Macon), as prescribed in 47 U.S.C. 251(c)(2)(B).

D. Significance of the Local Exchange Routing Guide ("LERG")

Verizon sponsored the testimony of Ms. Dana Smith, who served for eight years as the co-chair of the CO/NXX Subcommittee of the Alliance for Telecommunications Industry Solutions ("ATIS") Industry Numbering Committee forum. This forum "writes the guidelines that the industry and numbering administrators adhere to in relation to NANP resources . . ." (Verizon Brief, p. 6). Ms. Smith testified that these industry guidelines allow for carriers to choose different geographic locations for the rating and routing of calls. (Tr. 28). The Hearing Officer determined that PST was in violation of the standard industry guidelines by refusing to load Verizon's 478-391 NPA-NXX code. (Initial Decision, p. 6). PST argued that the Hearing Officer erred by finding PST in violation of voluntary industry guidelines. (PST Brief in Support of Application, p. 7). PST states that the guidelines are not binding on carriers, and that the parties, instead, are bound by the terms of their interconnection agreement. *Id.* Verizon states that the failure to abide by the industry guidelines will result in call blocking. (Tr. 28, 54-55). In addition, Verizon states that the parties' interconnection agreement requires that parties be afforded rating parity. (Verizon Post-Hearing Brief, p. 8).

Verizon's proposed rehome is in compliance with the standard industry guidelines. PST's argument that the guidelines are voluntary, and therefore do not override the parties' interconnection agreement fails because, as discussed above, the parties' interconnection agreement does not prohibit Verizon's proposed arrangement. To the contrary, the interconnection agreement provides that a call from a PST wireline customer to a Verizon customer with the 478-391 NPA-NXX should be treated as local because the number is associated with the Reynolds rate center. *See* Section IV(B)(3). Further, as discussed above, the split rating and routing arrangement proposed by Verizon does not constitute a Virtual NXX arrangement. Therefore, PST has not demonstrated any basis for not loading the numbers in compliance with Verizon's request. Moreover, by not loading the numbers, PST is failing to comply with its dialing parity obligations that derive from federal law and the parties' interconnection agreement.

In a footnote to its Post-Hearing Brief, PST argues that the costs it will incur as a result of Verizon's request justify its departure from the LERG's guidelines. FCC Rule 20.11(a) provides, in relevant part, as follows: "A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable." PST argues that it will incur costs as a result of Verizon's split rating and routing proposal. Verizon responds that PST's attempt to force intra-MTA calls to Verizon's customers to traverse PST's network so that PST can collect access or toll charges contravenes FCC rules on CMRS traffic. (Verizon Post-Hearing Brief, p. 10, citing to FCC Rule 51.701(b)(2)).

PST has failed to show that the split rating and routing arrangement proposed by Verizon is not economically reasonable. PST will not be required to make any network changes as a result of the rehome. PST's allegation that it is harmed is premised on the same arguments discussed and rejected herein. For the reasons discussed in prior sections of this order, Verizon's proposed arrangement neither violates the interconnection agreement nor constitutes a Virtual

NXX arrangement. The record evidence reflects that Verizon's request is consistent with industry guidelines and common industry practice. (Tr. 30). In fact, Ms. Smith testified that all six of PST's NXX codes across five rate centers in LATA 446 are homed to the same BellSouth tandem that Verizon has proposed in its arrangement. (Tr. 30). As explained by Ms. Smith, the use of the BellSouth tandem allows third party carriers to route calls to PST and Verizon. (Tr. 30). The fact that PST will not receive access revenues for traffic that does not transit its network does not render an accepted rating and routing arrangement economically unreasonable. There is no need for the third party traffic to route through the PST switch.

In addition, PST cites to the testimony of Mr. Staurulakis for support of its position that it will be harmed by the split rating and routing arrangement. (PST Post-Hearing Brief, p. 11). Mr. Staurulakis testified that PST will be harmed because it will not receive access charges when a landline PST customer calls a Verizon customer, who resides in Reynolds, but has driven to Macon for the day. (Tr. 212). Along these same lines, Mr. Stauralakis alleges that it is unfair that PST would have to pay reciprocal compensation and transit fees associated with this call. Again, this argument overlooks the differences between wireline and wireless service. It does not consider that the FCC has defined the MTA as the local calling area for determining whether reciprocal compensation is due for calls to wireless customers. PST's argument also fails to acknowledge its own admission that PST would receive access charges on a call to a wireless customer with an NPA-NXX from a different area, even if that customer was physically located in PST's local calling area at the time the customer receives a call from a PST wireline customer. In addition, PST would not have to pay reciprocal compensation or transit fees associated with such a call, even though the calling parties would both be located within PST's local calling area at the time of the call. PST's analysis of the "economically unreasonable" standard is one-sided and ignores the distinctions between wireline and wireless carriers. The Commission concludes that Verizon's proposed rating and routing arrangement is technically feasible and economically reasonable.

VII. PST's Motion for Commission Order to Include Deferred Effective Date

A. PST's Motion

On March 7, 2008, PST filed with the Commission a Motion for Commission Order to Include Deferred Effective Date. In its Motion, PST requested that the Commission state that its order will not become effective until ten (10) business days after the Order is reduced to writing and signed by the Chairman and Executive Secretary of the Commission. (Motion, p. 2). The Initial Decision states that PST must comply with the terms of the order "immediately." (Initial Decision, p. 7) PST states that the reasons behind this request are to avoid ancillary litigation over procedural issues and to provide the State Attorney General five days written notice. *Id.*

B. Verizon's Response

On March 11, 2008, Verizon filed a response in opposition to PST's Motion. Verizon argued that the effect of PST's Motion would be to provide PST with a temporary restraining order without having to justify the need for one before a judicial forum. (Response, p. 1).

Verizon adds that PST's Motion is an attempt to delay the matter and bolster its case for a stay in federal court. *Id.* at 2.

C. Staff Recommendation

The Commission Staff recommends that the Commission order PST to load Verizon's 478-391 NPA/NXX code assigned by NANPA to Verizon in PST's switches within ten business days of the Commission order. Staff's recommendation differs in form from the relief sought by PST in its motion in that it does not entail delaying the effective date of the Commission order. Under Staff's recommendation, the Commission order is effective upon being reduced to writing and signed by the Chairman and the Executive Secretary, in accordance with Commission Rule 515-2-1-.03(2). However, consistent with the relief sought by PST, Staff's recommendation provides PST with ten business days to comply with the order.

D. Discussion

The Commission adopts Staff's recommendation. Staff's recommendation does not result in the equivalent of providing PST with a temporary restraining order. Staff is not recommending that the Commission stay its order. It is not unusual for the Commission to provide parties with a reasonable time period to comply with Commission orders. The ten business days that PST would have to comply with the terms of the Commission order does not constitute an unreasonable delay. Obviously, given that the Commission granted the relief sought by Verizon on the merits, allowing PST ten business days does not in any way indicate a belief that PST has satisfied any of the criteria necessary for obtaining injunctive relief in federal court of a decision issued by this agency. PST shall comply with the terms of this Commission order within ten business days of the date of this order.

VIII. Conclusion and Ordering Paragraphs

The Commission finds and concludes that the issues presented to the Commission for decision should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to the applicable federal law, Georgia law and Commission Rules.

WHEREFORE IT IS ORDERED, that the Commission hereby adopts the Initial Decision issued by the Hearing Officer, except that PST shall have ten business days from the date of this order to comply with the terms of this order.

ORDERED FURTHER, Public Service Telephone Company shall load Verizon's 478-391 NPA-NXX code assigned by NANPA to Verizon in Public Service's switches within ten business days from the date of this order.

ORDERED FURTHER, that Public Service Telephone Company shall not impede or interrupt the rating and routing of calls as proposed by Verizon for the 478-391 NPA-NXX code, and that Public Service Telephone Company shall provide local dialing parity for such calls.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 21st day of February, 2008.

Reece McAlister
Executive Secretary

Date: 4-4-08

Chuck Eaton
Chairman

Date: 4/4/08

ATTACHMENT B

PUBLIC SERVICE TELEPHONE COMPANY, Plaintiff, v. THE GEORGIA PUBLIC SERVICE COMMISSION; et al., Defendants.

CIVIL ACTION FILE NO. 1:08-CV-1437-CC,CIVIL ACTION FILE NO. 1:08-CV-1438-CC

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

755 F. Supp. 2d 1263; 2010 U.S. Dist. LEXIS 134209

February 4, 2010, Decided
February 4, 2010, Filed

SUBSEQUENT HISTORY: Affirmed by *Public Serv. Tel. Co. v. Ga. PSC, 2010 U.S. App. LEXIS 25324 (11th Cir. Ga., Dec. 9, 2010)*

COUNSEL: [*1] For Public Service Telephone Company, Plaintiff (1:08-cv-01437-CC): Benjamin H. Dickens, LEAD ATTORNEY, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, Washington, DC; Larry Craig Dowdy, LEAD ATTORNEY, McKenna Long & Aldridge, Atlanta, GA.

For The Georgia Public Service Commission, Chuck Eaton, in his official capacity as Chairman of the Georgia Public Service Commission, Robert B. Baker, in his official capacity as Commissioner of the Georgia Public Service Commission, H. Doug Everett, in his official capacity as Commissioner of the Georgia Public Service Commission, Angela E. Speir, in her official capacity as Commissioner of the Georgia Public Service Commission, Stancil O. Wise, in his official capacity as Commissioner of the Georgia Public Service Commission, Defendants (1:08-cv-01437-CC): Daniel S. Walsh, Office of State Attorney General, Department of Law State of Georgia, Atlanta, GA.

For Alltel Communications, LLC, formerly known as Alltel Communications, Inc., Defendant (1:08-cv-01437-CC): Stephen B. Rowell, LEAD ATTORNEY, PRO HAC VICE, Alltell Communications, LLC, Little Rock, AR; Michael Singleton Reeves, Friend Hudak & Harris, LLP, Atlanta, GA.

For Georgia Telephone Association, [*2] Amicus (1:08-cv-01437-CC): Stephen Kraskin, LEAD ATTORNEY, PRO HAC VICE, The Law Office of Stephen G. Kraskin, Washington, DC; John L. Watkins, Barnes & Thornburg LLP, Atlanta, GA.

For Public Service Telephone Company, Plaintiff (1:08-cv-01438-CC): Benjamin H. Dickens, LEAD ATTORNEY, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, Washington, DC; Jeremy M. Moeser, Larry Craig Dowdy, LEAD ATTORNEYS, McKenna Long & Aldridge, Atlanta, GA.

For The Georgia Public Service Commission, Chuck Eaton, in his official capacity as Chairman of the Georgia Public Service Commission, Robert B Baker, in his official capacity as Commissioner of the Georgia Public Service Commission, H. Doug Everett, in his official capacity as Commissioner of the Georgia Public Service Commission, Angela E. Speir, in her official capacity as Commissioner of the Georgia Public Service Commission, Stan Wise, in his official capacity as Commissioner of the Georgia Public Service

Commission, Defendants (1:08-cv-01438-CC): Daniel S. Walsh, Office of State Attorney General, Department of Law State of Georgia, Atlanta, GA; Sidney R. Barrett, Jr., Office of State Attorney General, Atlanta, GA.

For Verizon Wireless of the East [*3] LP, doing business as Verizon Wireless, Defendant (1:08-cv-01438-CC): Elaine D. Critides, LEAD ATTORNEY, Verizon Wireless, Washington, DC; Charles Frederick Palmer, Troutman Sanders, Atlanta, GA; Kevin Gregory Meeks, Troutman Sanders, LLP-ATL, Atlanta, GA.

For Georgia Telephone Association, Amicus (1:08-cv-01438-CC): Stephen Kraskin, LEAD ATTORNEY, PRO HAC VICE, The Law Office of Stephen G. Kraskin, Washington, DC; John L. Watkins, Barnes & Thornburg LLP, Atlanta, GA.

JUDGES: CLARENCE COOPER, United States District Judge.

OPINION BY: CLARENCE COOPER

OPINION

ORDER

These are related telecommunications cases in which Plaintiff Public Service Telephone Company ("PSTC" or "Plaintiff) challenges orders issued by the Georgia Public Service Commission (the "Commission") against PSTC in favor of Alltel Communications, LLC ("Alltel") (Civil Action No. 1: 08-CV-1437-CC) and Verizon Wireless of the East LP ("Verizon Wireless" and, together with the Commission and Alltel, the "Defendants") (Civil Action No. 1:08-CV-1438-CC). Before the Court is PSTC's request for injunctive relief pursuant to the Verified Complaints filed in both cases. For the reasons stated below, the Court rules in favor of Defendants in both cases.

I. [*4] BACKGROUND

Although PSTC's disputes with Alltel and Verizon Wireless are not identical, they do arise from similar facts and generally depend on the same provisions of law. In addition, the interconnection and reciprocal compensation agreements (the "interconnection agreements" or "ICAs") that PSTC has entered into with Alltel and Verizon Wireless are the same.

PSTC is a local exchange carrier ("LEC"), as defined by *47 U.S.C. § 153(26)*, and an incumbent local exchange carrier ("ILEC"), as defined by *47 U.S.C. § 251(h)*. PSTC provides wireline telephone services to customers in seven exchanges (sometimes called "rate centers") in certain counties of Georgia, including all or portions of Talbot, Taylor, Muscogee, Crawford, Macon, Marion, Monroe, Upson, and Bibb counties (its local exchange service area). All of PSTC's end offices are inside an Extended Area Service ("EAS") area and, therefore, PSTC customers inside the PSTC network can call each other with local calls (i.e., without long distance or toll (1+) dialing and without incurring long distance or toll charges). PSTC and its customers have also delineated, with Commission approval, certain geographic areas outside PSTC's local exchange [*5] service area that can be dialed and completed as local calls. For example, PSTC customers in its Lizella and Roberta exchanges can call Macon, Georgia exchanges (served by a different ILEC, i.e., AT&T, formerly known as BellSouth Telecommunications) without incurring long distance charges. PSTC customers in Talbotton and Geneva can call Columbus, Georgia exchanges (also served by AT&T) without long distance charges. Therefore, depending on where PSTC customers' calls originate and terminate, the calls to other wireline carriers can be either local or toll.

Alltel and Verizon Wireless are licensed by the FCC as commercial mobile radio service ("CMRS") carriers to provide wireless telephone service throughout most of Georgia, including in PSTC's local exchange service territory. The parties agree that PSTC's local exchange service area and the Macon and Columbus exchanges are within the same "Major Trading Area" (or "MTA"), as established by *47 C.F.R. § 24.202*. *47 C.F.R. § 51.701* establishes that traffic exchanged between local exchange carriers (including incumbent local exchange carriers) and CMRS providers that originates and terminates within the same MTA is subject to the FCC's rules [*6] governing reciprocal compensation. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C.R. 15499, at ¶ 1036, 1996 WL 452885 (August 8, 1996)* ("traffic to or from a [wireless provider's] network that originates and terminates within the same MTA is subject to transport and termination rates under [*47 U.S.C. §] 251(b)(5)*, rather than interstate and intrastate access charges").

A. The PSTC-Alltel Dispute

Prior to February 2005, PSTC, through its wireless affiliate, Public Service Cellular, provided wireless communication services. As part of its operations, Public Service Cellular established the 478-672 "NPA-NXX" code (i.e., the number block, containing the area code and the central office code, from which telephone numbers were assigned to the wireless subscribers) and "rated" this number block, for purposes of determining the jurisdiction of and compensation for calls to and from numbers assigned from the code, as local to PSTC's Roberta, Georgia rate center. Accordingly, at all times during PSTC's wireless operations, calls to the numbers assigned from the 478-672 code (the "478-672 numbers") were dialed as local calls by any wireline [*7] customer in any PSTC exchange, regardless of the location of the wireless customer.

In February 2005, Alltel acquired PSTC's wireless operations, including the wireless subscribers assigned the 478-672 numbers. Following the acquisition, PSTC continued to treat calls from its subscribers to Alltel's 478-672 numbers as local calls, and no change was made to the rating of the 478-672 numbers as local to PSTC's local exchange service area. In addition, the parties continued to maintain a direct point of interconnection ("POI") on PSTC's network facilities in Roberta for the exchange of local traffic between the parties. Calls originating with third party carriers also transited, or routed through, PSTC's Roberta switch and were delivered to Alltel at the Roberta POI. Although not terminating such traffic, PSTC apparently billed access charges to the third-party carriers originating the calls. On its side of the POI in Roberta, Alltel established network facilities and handled the transport to Alltel's wireless switch located in Columbus, Georgia. PSTC incurred no costs associated with the network and transport on Alltel's side of the POI.

In 2006 Alltel "re-homed" (i.e., re-routed) calls [*8] to its customers from third-party carriers. Alltel did so by routing such calls to its facilities through the Macon tandem of AT&T, as a consequence of which calls not intended for PSTC's customers would no longer transit PSTC's facilities. According to the Commission order below, Alltel provided PSTC and other carriers with notice of the rerouting consistent with industry guidelines, and the re-home was approved by the North American Numbering Plan Administrator ("NANPA"). The 478-672 numbers remained rated to Roberta. The re-home did not affect the technical ability of PSTC to continue to route calls originated from its customers to Alltel via the Roberta POI. Nor did the re-home cause PSTC to incur any additional costs.

Approximately two weeks prior to the stated effective date of the re-home, PSTC provided Alltel notice of its intent to "re-rate" to Macon all calls to the 478-672 numbers. Thus, calls to the 478-672 numbers from PSTC's customers that did not have local calling to Macon would be toll calls. PSTC contended that such calls must be treated the same as calls from a PSTC wireline customer to an AT&T wireline customer in Macon. Alltel objected to the rerating, and provided [*9] PSTC with a bona fide request for interconnection agreement negotiations pursuant to *47 U.S.C. §§ 251* and *252*. Both before and during negotiations, Alltel requested that the rating of traffic at and routing of traffic through Roberta not change for traffic between PSTC and Alltel.

On September 11, 2006, Alltel filed a complaint with the Commission to prevent PSTC from re-rating the traffic and revoking the local dialing parity required by *47 U.S.C. § 251(b)(3)* and *47 C.F.R. § 51.207*. PSTC submitted an answer and counterclaim, the latter alleging, in principal part, that Alltel had failed to reciprocally terminate traffic for which PSTC was entitled to reciprocal compensation. On September 28, 2006, the Commission issued a standstill order that directed PSTC not to make dialing, rating, or routing changes pending the resolution of the proceeding.

According to the Commission order below, PSTC insisted that the POI be located in Macon, to which PSTC had extended its network. In November 2006, the parties entered into an interconnection and reciprocal compensation agreement (the "Alltel Agreement" or "Alltel ICA"), which was made effective September 6, 2006. The Alltel Agreement, which was [*10] based on the interconnection agreement entered into between PSTC and Verizon Wireless, established the direct interconnection POI at Macon for the exchange of the parties' traffic.

Following the negotiation of the Alltel Agreement, and throughout the proceedings before the Commission and this Court, PSTC has asserted that because calls to the 478-672 numbers were re-routed through Macon rather than through Roberta while the numbers themselves remained rated to Roberta, a "split rating and routing" [1] process has been established that would

unlawfully expand the geographic scope of local calling from PSTC's local exchange service area and cause PSTC to lose reciprocal compensation payments. According to PSTC, the split rating and routing violates the Telecommunications Act of 1996 (the "Act"), Pub. L. No. 104-106, 110 Stat. 56 (1996) (codified in scattered sections of title 47 of the United States Code) and the Alltel ICA. The core of PSTC's argument is essentially that the Alltel ICA - principally, Section IV(B)(3) - and *47 U.S.C. § 252(a)(1)* contract around the dialing parity and other requirements of *47 U.S.C. § 251(b)*, and that the Commission in essence has created a dialing disparity [*11] between wireline and wireless customers. PSTC also contends that the split rating and routing violates *47 C.F.R. § 20.11*, which allows local exchange carriers to avoid interconnection that is economically unreasonable. Further, PSTC asserts that the arrangement is tantamount to "virtual NXX," in which local calls are impermissibly made to remote calling locations.

> 1 PSTC has referred to the assignment of two different geographical locations for rating and routing purposes in the Local Exchange Routing Guide ("LERG") as "split rating and routing." Defendants contend that split rating and routing is common practice and consistent with industry guidelines for wireless carriers establishing numbers associated with rural LEC rate centers, especially when the rural LEC does not have its own tandem, as is the case with PSTC. PSTC contends that split rating and routing is a non-standard configuration in the industry. Alltel maintains that in its case split rating and routing was established at the insistence of PSTC.

On October 2, 2006, the Commission referred the matter to a Hearing Officer. Thereafter, discovery was conducted and the Hearing Officer received pre-filed testimony from the parties, [*12] leading to an evidentiary hearing on April 19, 2007. Following the hearing the parties submitted briefs. In PSTC's post-hearing brief it asserted, for the first time in the proceeding, the claim that the alternative dispute resolution ("ADR") provision set forth in the Alltel ICA deprived the Commission of jurisdiction to decide the matter. On December 6, 2007, the Hearing Officer issued an Initial Decision, finding for Alltel and dismissing PSTC's counterclaim.

On January 4, 2008, PSTC filed an Application for Review of the Initial Decision, seeking full Commission review. Following the submission of comments by the parties, the Commission Staff addressed the arguments raised by PSTC and recommended that the Commission adopt the Hearing Officer's Initial Decision. The parties presented oral comments to the Commission at the February 16, 2008 Telecommunications Committee, which is an open meeting. On February 21, 2008, during an Administrative Session (an open meeting), the Commission voted to adopt the Hearing Officer's Initial Decision. On April 4, 2008, the Commission entered a written order in favor of Alltel (the "Alltel Order").

The Alltel Order found that PSTC had waived any jurisdictional [*13] argument related to ADR because it had acted inconsistently with the asserted right by litigating the dispute through hearing before raising the claim, thereby prejudicing Alltel. In addition, the Commission found that the dispute did not arise under the parties' ICA. The Commission also rejected PSTC's arguments premised on the Act and the Alltel Agreement, finding that Section IV(B)(3) of the Alltel Agreement does not provide that calls to the 478-672 numbers should be rated as toll calls, and that PSTC's attempt to re-rate calls that were locally rated prior to the effective date of the Alltel Agreement violated the dialing parity requirements of *Section 251(b)(3) of the Act* and the FCC rules (including *47 CFR §§ 51.205* and *51.207*). The Commission found that the evidence reflected that the 478-672 numbers are assigned to subscribers within the MTA that encompasses PSTC's local exchange service area. Alltel's customers live and work in PSTC's local exchange service area, and, indeed, most of the subscribers with the 478-672 numbers are Roberta residents who were assigned those numbers by PSTC's wireless affiliate. In addition, the Commission rejected the *47 C.F.R. § 20.11* argument, [*14] noting that PSTC admitted that the re-home did not require PSTC to do anything to its network or to incur any additional costs. Moreover, the Commission found that PSTC was not entitled to require transiting through its network of calls originating from third-party carriers, and PSTC was not entitled to receive reciprocal compensation or access revenues from third-party carriers originating calls destined to Alltel. PSTC's own evidence demonstrated that there was no significant change in the volume of Alltel-originated traffic to PSTC for which PSTC was entitled to receive reciprocal compensation. Finally, the Commission rejected PSTC's virtual NXX argument, distinguishing the facts in the case from those considered

by the Commission in its previous determinations on the subject.

On April 9, 2009 PSTC filed a Motion for Reconsideration claiming that the Commission modified the Hearing Officer's Initial Decision without conducting a formal review of the Initial Decision pursuant to *O.C.G.A. § 50-13-17(a)*. PSTC also claimed that the Alltel Order did not reflect the Commission's decision in the February 21, 2008 open meeting, and, therefore, was in violation of the Georgia Open Meetings [*15] Act, *O.C.G.A. § 50-14-1(b)*. On April 10, 2008, the Commission's Telecommunications Committee heard oral argument from the parties on PSTC's Motion for Reconsideration. On April 15, 2008, the Commission denied PSTC's Motion for Reconsideration, ratified the Alltel Order, and further ordered that PSTC continue to rate and route the 478-672 numbers as local calls. PSTC then filed its Verified Complaint for Injunctive Relief and associated motions in this Court. On April 18, 2008, the Commission issued a written order denying the Motion for Reconsideration.

In accordance with the Commission's decisions, PSTC is currently rating its subscribers' calls to the 478-672 numbers as local. Alltel is accepting PSTC's traffic in Macon at the direct POI on PSTC's network and is transporting the calls to its distant wireless switch and then to the cell tower that is serving its wireless subscriber. As when PSTC was the wireless service provider, a wireless subscriber, although assigned a 478-672 number because of his or her residence or work in PSTC's local exchange service area, may be located within PSTC's local exchange service area or elsewhere when placing or receiving a call from his or her [*16] mobile phone. PSTC continues to contend that Alltel established "split rating and routing," that such an arrangement violates the Alltel ICA regarding local and toll calling patterns, and that any comparisons to the local dialing and other treatment of the 478-672 numbers prior to Alltel's split rating and routing are misplaced. Both the Commission and Alltel contend that the change in routing does not relieve PSTC of the obligations imposed by the Act and the FCC rules, which in any event are not changed by the Alltel Agreement. The Commission and Alltel also contend that PSTC is not being denied any reciprocal compensation from Alltel in accordance with the terms of the Alltel Agreement, and that PSTC is not incurring any charges for transiting its traffic to Alltel through another carrier because PSTC is delivering its traffic directly to Alltel. Alltel contends that the change in POI from one point on PSTC's network, Roberta, to another point on PSTC's network, Macon, was at the request of PSTC. In addition, the Commission and Alltel claim that PSTC does not have any contractual, statutory, regulatory or other legal right to require that third party originated traffic be routed [*17] through PSTC's network before reaching Alltel's subscribers.

B. The PSTC-Verizon Wireless Dispute

In November 2005, Verizon Wireless and PSTC voluntarily entered into an interconnection agreement (the "Verizon Agreement" or the "Verizon ICA" and, together with the Alltel ICA, the "ICAs"), which was made retroactively effective from January 1, 2005, and which was approved by the Commission. The Verizon ICA is the same as the Alltel ICA, which was entered into approximately ten months later, and contains provisions that PSTC contends are related to, among other things, local and toll calling, network interconnection, and ADR.

With respect to network connection, the ICA provides for direct connection between the Verizon Wireless and PSTC networks in Macon, Georgia. This Macon POI was established at the express request of PSTC. Verizon Wireless also contends that the ICA permits indirect connection such that the parties could exchange traffic indirectly via AT&T's Macon Tandem. PSTC disputes this contention and claims that the parties elected only to have direct connection.

In order to provide its customers with telephone numbers that would allow calls originating from PSTC landlines to be [*18] considered local calls throughout the PSTC "community of interest," [2] Verizon Wireless applied for and obtained the 478-391 NPA-NXX code from NANPA. This code corresponds to the central office code associated with PSTC's Reynolds, Georgia rate center. Verizon Wireless notified PSTC that it intended to obtain this NPA-NXX code and requested PSTC's approval to enter the code for what Verizon Wireless understood to be PSTC's Roberta tandem switch into a particular field in the LERG and to establish AT&T's Macon tandem as the homing (or routing) tandem for the new NPA-NXX code in the LERG. Verizon Wireless subsequently learned that PSTC's switch in Roberta is not a tandem switch. As a result, Verizon Wireless established its Reynolds NPA-NXX in the LERG Routing Guide without using the Roberta tandem switch.

2 "Community of interest" is a term of art in the telecommunications field referencing a grouping of telephone users who call one another with a high degree of frequency. See Harry Newton, Newton's Telecom Dictionary 418 (20th ed. 2004).

In early January 2007, Verizon Wireless tested calls to its new Reynolds numbers and discovered that PSTC had not loaded the new NPA-NXX code into PSTC's [*19] switches. PSTC's landline customers, therefore, could not call Verizon Wireless customers with this NPA-NXX code. Under the Commission's supervision, the parties engaged in discussions, but PSTC would not agree to load the NPA-NXX code. PSTC claims that by loading this code, PSTC would accept Verizon Wireless's proposed configuration, which includes split rating and routing, and would facilitate dialing which PSTC alleges violates the Verizon ICA. Therefore, PSTC did not agree to load the code. As with the Alltel dispute, PSTC contends that Verizon Wireless's request to load the code would improperly expand the geographic reach by which Verizon Wireless's customers could be contacted by PSTC's customers without being charged toll charges. PSTC further contends, as in the Alltel dispute, that if PSTC loads the code, PSTC will lose access charges and reciprocal compensation payments and would have to pay transit fees to AT&T for indirect connection. Verizon Wireless disagrees with PSTC that the proposed configuration violates any provision of the Verizon ICA. Verizon Wireless contends that PSTC's loading of the code would not force PSTC to route its customers' calls to Verizon Wireless [*20] indirectly as such calls could be routed over the existing direct interconnection, and transit fees would not be applied by AT&T. However, even if routing of such calls via AT&T's Macon Tandem were necessary, Verizon Wireless states that such routing is provided for through the Verizon ICA's indirect interconnection provisions. PSTC disagrees with Verizon Wireless's contentions.

Verizon Wireless further alleges that without this code being loaded in PSTC's switches, PSTC's landline customers cannot place calls to Verizon Wireless's customers who have been assigned numbers from the 478-391 NPA-NXX code regardless of whether the number is dialed as a local or long distance call. Verizon Wireless maintains that PSTC's refusal to load the code is harmful to consumers, who should be permitted to obtain from Verizon Wireless telephone numbers that permit them to receive calls from PSTC landline customers as local calls, without incurring access or toll charges. Verizon Wireless claims that customers of PSTC and Verizon Wireless would be harmed because certain calls from PSTC's network would not complete to mobile subscribers of Verizon Wireless.

In response to PSTC's decision not to load the [*21] code, on February 28, 2007, Verizon Wireless filed a Request for Emergency Relief with the Commission. On March 22, 2007, the Commission conducted a hearing to determine if an emergency existed "affecting public health, safety, and welfare." In its April 9, 2007 Administrative Session, the Commission found no such emergency existed. Subsequently, on April 19, 2007, a Commission Hearing Officer conducted an evidentiary hearing which was held immediately following the Alltel hearing. On December 6, 2007, the Commission Hearing Officer issued an Initial Decision finding for Verizon Wireless.

On January 4, 2008, PSTC filed an Application for Review of Initial Decision Seeking Commission Review of Hearing Officer's Initial Decision. On January 16, 2008, Verizon Wireless submitted its Response to PSTC's Application for Review. Subsequently, Commission Staff prepared a recommendation addressing the arguments in PSTC's Application for Review and recommending that the Commission adopt the Commission Hearing Officer's Initial Decision. The Commission's Telecommunications Committee, on which all five Commissioners participate, heard oral argument from the parties' counsel at the Committee's meeting [*22] on February 16, 2008. On February 21, 2008, during an Administrative Session (an open meeting), the Commission voted to adopt the Initial Decision of the Hearing Officer.

The Commission ultimately entered a written order in favor of Verizon Wireless on April 4, 2008, ordering PSTC to load Verizon Wireless's 478-391 NPA-NXX code within ten business days, to refrain from impeding or interrupting the rating or routing of calls for that code, and to provide local dialing parity for those calls. In reaching its decision, the Commission concluded that PSTC did not have any right to ADR because the dispute did not arise under the parties' interconnection agreement. The Commission found that, even if the ADR provision had applied, PSTC's conduct resulted in waiver of that provision. As in the Alltel case, the Commission determined that PSTC's position was inconsistent with

both federal law and the parties' interconnection agreement. Specifically, the Commission determined that the dialing parity requirements under the Act required that the calls in question be rated as local. The Commission construed the parties' interconnection agreement to reach this same result. Moreover, the Commission [*23] concluded that nothing in the interconnection agreement precluded the parties from exchanging traffic via indirect interconnection. The Commission made a number of findings based on the evidence before it in the proceeding. The Commission determined that the evidence in the case reflected that the split rating and routing arrangement did not constitute an impermissible virtual NXX arrangement, that Verizon Wireless assigned numbers to its customers based on where the customers' community of interest, and that the rating and routing arrangement is not economically unreasonable.

PSTC filed a Motion for Reconsideration with the Commission in which it claimed that the Commission improperly modified the Hearing Officer's Initial Decision without conducting a formal review of the Initial Decision in violation of *O.C.G.A. § 50-13-17(a)* and issued an order that did not reflect its decision in the February 21, 2008 open meeting in violation of the Georgia Open Meetings Act, *O.C.G.A. § 50-14-1 (b)*. On April 10, 2008, the Commission's Telecommunications Committee heard oral argument from the parties on PSTC's Motion for Reconsideration. In its April 15, 2008 Administrative Session (an open meeting), [*24] the Commission denied PSTC's Motion for Reconsideration, ratified its prior order, and further ordered that PSTC remained obligated to load Verizon Wireless's NPA-NXX code by April 18, 2008. On April 18, 2008, the Commission issued its written order denying the Motion for Reconsideration.

C. Proceedings Before This Court

On April 16, 2008, PSTC filed a Complaint for Injunctive Relief and a Motion for Temporary Restraining Order and Preliminary Injunction in both the Alltel and Verizon Wireless cases. This Court heard oral argument on the Motions for Temporary Restraining Order and Preliminary Injunction on April 21, 2008, and denied the Motions by written order on May 6, 2008. The parties then submitted briefs on the merits pursuant to a scheduling order the Court entered. The Court heard oral argument on the merits on December 18, 2009.

II. STANDARD OF REVIEW

The Eleventh Circuit has set forth a two-tiered standard for federal court review of state public service commission decisions. See *BellSouth Telecomms., Inc. v. NuVox Commc'ns, Inc., No. 1:04-CV-2790-WSD, 2006 U.S. Dist. LEXIS 65029, at *25 (Sept. 12, 2006)* (citing *MCI WorldCom Commc'ns, Inc. v. BellSouth Telecomms., Inc., 446 F.3d 1164, 1170 (11th Cir. 2006)*, [*25] vacated as moot, No. 06-15443-BB (11th Cir. Apr. 27, 2007)). Under this two-tiered standard, issues of federal law are reviewed *de novo*. See *MCI WorldCom, 446 F.3d at 1170 (11th Cir. 2006)*; *NuVox, 2006 U.S. Dist. LEXIS 65029, at *25*. A public service commission's factual findings, however, are reviewed under an "arbitrary and capricious" standard, and this standard specifically applies to a state public service commission's interpretation and application of an interconnection agreement, as well as to the commission's state law determinations. See *NuVox, 2006 U.S. Dist. LEXIS 65029, at *25, *28* ("This Court will review the [Commission's] interpretation of the Agreement under the 'arbitrary and capricious' standard.") (citing *MCI WorldCom, 446 F.3d at 1170*).

"A finding that a decision was arbitrary or capricious requires [the court] to find no rational basis for the decision." *Tackitt v. Prudential Ins. Co., 758 F.2d 1572, 1575 (11th Cir. 1985)* (citations omitted). Once the court finds a rational connection between the evidence and the decision, the court must defer to the agency's expertise. See id.

The requirements for permanent injunctive relief are (1) success on the merits, (2) continuing [*26] irreparable injury, (3) the absence of an adequate remedy at law, and (4) that the injunction, if issued, would not be adverse to the public interest. *Zardui-Quintana v. Richard, 768 F.2d 1213, 1216 (11th Cir. 1985)*. Failure to demonstrate all of these requirements must result in denial of the requested permanent relief. [3] This standard is "essentially the same as the standard for a preliminary injunction, except that the plaintiff must show actual success on the merits rather than a 'likelihood of success' on the merits." See *European Connections & Tours, Inc. v. Gonzales, 480 F. Supp. 2d 1355, 1369 (N.D. Ga. 2007)* (citing *Klay v. United Healthgroup, Inc.. 376 F.3d 1092, 1097 (11th Cir. 2004))*.

3 In Klay v. United Healthgroup, Inc., the Eleventh Circuit Court of Appeals noted that

> "most courts do not consider the public interest element in deciding whether to issue a permanent injunction, though the Third Circuit has held otherwise." *376 F.3d 1092, 1097 (11th Cir. 2004)* (citing *Shields v. Zuccarini, 254 F.3d 476, 482 (3d Cir. 2001))*.

III. DISCUSSION

Plaintiff contends that the Commission's orders violate (1) the Telecommunications Act of 1996 and the ICAs, (2) *47 C.F.R. § 20.11*, and [*27] (3) Georgia contract law interpretation principles.

A. The Telecommunications Act of 1996 and the ICAs

Plaintiff cites the NuVox decision as support for its contention that the Commission erred as a matter of federal law by imposing on the parties the local dialing parity obligations of *Sections 251(b)* and *(c)* of the Act. Plaintiff maintains that once parties have voluntarily negotiated an ICA, the terms of the agreement govern rather than the substantive duties provided in *Sections 251(b)* and *(c)*. NuVox, however, involved a conflict between an interconnection agreement and federal law with regard to audit rights, and the interconnection agreement at issue in that case expressly addressed the audit rights to be applied. *2006 U.S. Dist. LEXIS 65029, at *8*-ll. Accordingly, the NuVox court reviewed the interrelationship of the interconnection agreement, federal and state law, and principles of contract interpretation. See *id. at *8, *29-60*.

These cases differ from *NuVox* in that nothing in the ICAs suggests that the parties agreed to alter the local dialing parity or code-loading requirements of federal law. Moreover, the interconnection agreements expressly require "consisten[cy of the arrangements [*28] set forth therein] with *Section 251* of the . . . Act," which would include *47 U.S.C. § 251(b)(3)*'s obligation of dialing parity, as well as with ILEC duties under *47 U.S.C. § 251(c)*. In addition, the interconnection agreements incorporate *47 U.S.C. § 251(b)(5)* and *47 C.F.R. § 51.701* in defining "Major Trading Area" and in stating that calls originating and terminating within the same Major Trading Area are subject to the reciprocal compensation set forth in Appendix A of the agreements. As the Commission recognized, there is no reason to treat dialing parity under *§ 251(b)(3)* and *47 C.F.R. § 51.207* differently from the treatment of reciprocal compensation. The traffic within an MTA that is subject to reciprocal compensation, *Alma Commc'ns Company v. Missouri Public Service Commission, 490 F.3d 619 (8th Cir. 2007)*, and *Atlas Telephone Company v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005)*, should also be treated as subject to local dialing. *WWC License, L.L.C. v. Boyle, 459 F.3d 880 (8th Cir. 2006)*.

Because the ICAs explicitly seek arrangements consistent with federal law in general and do not by their terms contract around the Act, the Commission did not err in holding [*29] Plaintiff to its obligations under the Act. The Commission's finding that the ICAs did not authorize Plaintiff to refuse to treat calls to Defendants' customers as local when calls to similarly rated wireline customers would be treated as local, or to refuse to load Verizon Wireless's newly assigned NPA-NXX code is rational and cannot be deemed arbitrary and capricious. The Commission's interpretation also furthered the public interest in maintaining the competitive neutrality and ubiquitous quality of the public switched telephone network. [4] In issuing its orders, the Commission carried out its statutory authority to interpret and enforce the ICAs and provided a rational basis for the interpretation set forth in its decisions. The Commission also properly applied federal law. Therefore, consistent with the principles set forth in NuVox and for the reasons set forth below, this Court upholds the Commission's orders with regard to the Commission's application of the Act to the ICAs.

> 4 "Public Switched Telephone Network," or "PSTN," is a term of art which simply refers to the worldwide voice telephone network accessible to all persons with telephones and access privileges. See Newton, supra note 2, at 418.

1. [*30] ***Local Calling Scope and Local Dialing Parity***

Local dialing parity "includes the recognition of local numbers for competitors' customers and the treatment of certain calls between carriers' customers as local calls with seven-digit dialing." *WWC License. L.L.C., 459 F.3d at 884*. The parties dispute whether calls from Plaintiff's wireline customers, which are routed through AT&T's Macon exchange before terminating with Verizon Wireless and Alltel customers with numbers also associated with the Reynolds and the Roberta exchanges, should be local or toll calls. The Commission correctly interpreted Section IV(B)(3) of the ICAs as requiring that PSTC continue to provide the local

dialing parity that existed when the numbers at issue in the Alltel case were initially established as local by PSTC. Likewise, the Commission correctly concluded that nothing in the Verizon ICA suggests the 478-391 NPA-NXX code obtained by Verizon Wireless from NANPA should not be afforded similar local dialing parity.

Federal law provides that calls from Plaintiff's wireline customers to customers of other carriers with telephone numbers associated with a rate center in Plaintiff's local calling area should be rated [*31] as local calls. *47 U.S.C. § 251(b)(3)* establishes the duty of a LEC to provide dialing parity to competing providers of telephone exchange service and telephone toll service. *47 C.F.R. § 51.207* establishes that a LEC "shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider." For calls from PSTC subscribers to Alltel's or Verizon Wireless's subscribers, the number blocks or codes at issue in these cases are assigned to subscribers with a community of interest in PSTC's local calling area, i.e., customers who live or work in PSTC's local exchange calling area. As the Commission rationally determined, the record evidence does not support PSTC's contention that these numbers are being assigned to subscribers lacking such community of interest. Most subscribers with 478-672 numbers are residents of PSTC's local exchange service area and were assigned the numbers when PSTC's wireless affiliate operated the business.

Moreover, federal law is also clear on what constitutes a "local" call between a local [*32] exchange carrier and a commercial mobile radio service ("CMRS") provider. The FCC has established that for purposes of reciprocal compensation, calls between a LEC and a CMRS network which originate and terminate within the same MTA, such as those at issue in these cases, are local calls. See *47 C.F.R. § 51.701(b)(2)*. This same standard for identifying local calls applies in the context of local dialing parity. *WWC License, L.L.C., 459 F.3d at 892*. The fact that the parties entered into ICAs which address some issues does not negate the application of federal law to other issues that may not have been plainly addressed in the ICAs. *NuVox, 2006 U.S. Dist. LEXIS 65029, at *49* (stating that "the rights granted by *§ 252(a)(1)* include the right to *incorporate or ignore* the provisions of *§ 251(b)* and *(c)* as the parties choose . . . ." (emphasis added)).

Plaintiff argues that Section IV(B)(3) of the ICAs provides terms defining when calls originating from Plaintiffs customers to Verizon Wireless and Alltel customers will be treated as toll calls and when they will be treated as local calls. That section states in relevant part:

> As it relates to whether a call is treated as a toll call or is [*33] included as part of the local exchange service for calls in the ILEC's local calling area and without prejudice to the ILEC's position that it has no legal obligation to do so, the ILEC agrees to rate its end users' originated calls to CMRS Carrier end users the same way it rates its end users' calls to another wireline carrier's end users when the CMRS Carrier's end users have a telephone number associated with the same rate center as that of the other wireline carrier. Thus, if the ILEC's end user's call to another incumbent carrier's NPA-NXX rate center code is rated and dialed as a local call, then for purposes of the ILEC's end user's calls to CMRS Carrier end users with numbers associated with the same rate center, the ILEC will treat those calls as local for purpose of its end-user dialing and when billing its end users.

Plaintiff argues that this provision requires that it rate a wireline-to-mobile call from one of its end users to a Verizon Wireless or Alltel mobile phone at a particular rate center as local only if the following two conditions are met: (1) a PSTC end user's call to another incumbent wireline carrier's NPA-NXX code would be rated and dialed as a local call, [*34] and (2) the CMRS carrier's (Verizon Wireless's or Alltel's) end user has a number associated with that same ILEC's rate center. Plaintiff maintains that the first of these two conditions is not met in these cases because the majority of Plaintiff's customers for whom Verizon Wireless and Alltel seek local calling patterns to Verizon Wireless and Alltel customers do not have local calling to other wireline customers in Macon. Plaintiff further argues that the second condition for local calling status is not met

because the Verizon Wireless and Alltel customers at issue do not have phone numbers that are rated at AT&T's Macon rate center.

Defendants argue that the Commission's orders correctly stated that Section IV(B)(3) of the ICAs "establishes that [PSTC] shall not discriminate against [Defendants'] customers in terms of whether a call is rated as local or toll." The Court agrees. The Commission accurately recognized that "[t]he fact that the call from the [PSTC] end user is *routed through* Macon does not impact the analysis under [the ICA]." (Emphasis added.) The key to the ICAs in this regard is that calls to Verizon Wireless and Alltel numbers must be rated the same as calls to landline [*35] numbers associated with the same *rate center* as the Verizon Wireless and Alltel numbers. This is consistent with the FCC's rules defining local dialing parity, and nothing in the language of Section IV(B) of the ICAs relieves Plaintiff from its local dialing parity obligation under *Section 251(b)(3)* of the Act. The homing of Verizon Wireless's Reynolds NPA-NXX and Alltel's Roberta NPA-NXX codes to Macon does not force Plaintiff to route its calls to Defendants' customers indirectly and does not cause any expansion of the local calling areas Plaintiff provides to its own customers. The Commission properly found that Section IV(B) of the ICAs is consistent with the non-discriminatory dialing parity requirements of the Act and FCC rules and that Section IV(B)(3) of the ICAs discusses the rating of calls, not their routing. Under Section IV(B)(3), a call from a PSTC wireline customer to a wireless customer of Alltel or Verizon Wireless with the numbers associated with the 478-672 or 478-391 rate centers is a local call. There is no basis to conclude that the Commission acted arbitrarily and capriciously in interpreting the ICAs or that the Commission incorrectly applied federal law to [*36] the issue of local dialing parity.

2. Federal Code-Loading Requirements

The Verizon Wireless case is also distinguishable from *NuVox* in that there is no provision in the Verizon ICA that addresses code loading and that gives any indication that the parties intended to contract around federal law on the issue. In the absence of any reference to code loading in the ICAs, it was not arbitrary and capricious for the Commission to conclude that the parties did not intend to contract around the obligations of federal law. The Alliance for Telecommunications Industry Solutions Industry Numbering Committee ("ATIS INC") sets the telecommunications industry NXX code guidelines through its Central Office/NXX ("CO/NXX") Subcommittee. These guidelines were developed at the FCC's direction, and FCC rules require NANPA to act in accordance with them. See *47 C.F.R. § 52.13(b)*; *In re Numbering Resource Optimization, 14 FCC Rcd 10322, 10339 at ¶36, 1999 FCC LEXIS 2451 (June 1, 1999)*. The standards-setting process works only when each carrier follows the guidelines. An important guideline to ensure completion of traffic between different providers' customers is that codes must be loaded within a specific [*37] time. Provisions from the ATIS INC's Central Office Code (NXX) Assignment Guidelines (ATIS-0300051) allow carriers to select different geographic locations for the rating and routing of calls. PSTC has not cited to any FCC or Commission decision that allows a carrier to avoid providing local dialing parity, ignore the industry guidelines, and resist opening a competitive wireless carrier's numbers in its switches.

3. Indirect Interconnection Under the ICAs and Federal Law

Plaintiff contends that the split rating and routing of calls to Defendants' customers results in indirect connection between the parties, via the AT&T Macon exchange, which, according to Plaintiff, the ICAs do not permit. Defendants maintain that homing codes to Macon does not equate to indirect interconnection and that, even if it does, indirect interconnection is permitted under the ICAs. Section IV of the ICAs, on "Traffic Exchange and Compensation," is divided into two types of interconnection - direct and indirect - and states in the first sentence of the section that the parties may exchange traffic "directly and/or indirectly as provided in [Subsections] A and B." Subsection A is entitled "Direct Interconnection," [*38] and Subsection B is entitled "Indirect Interconnection."

Subsection A states that, for direct interconnection, "[a]greed upon direct interconnection points are identified in Appendix B" to the ICAs, and Appendix B states that the direct interconnection point shall be on PSTC's network at 392 Pansy Avenue, Macon, Georgia 31204. Nowhere in Subsection A on direct interconnection (or in Subsection B on indirect interconnection or anywhere else) do the ICAs state that indirect interconnection is not allowed or that delineating an *indirect* interconnection point is required. The ICAs

simply provide in Appendix B that direct interconnection will occur in Macon pursuant to the requirement in Section IV(A) that any direct interconnection points must be identified.

If indirect interconnection were not permitted by the ICAs, there would be no reason for the parties to have included the first sentence of Section IV or the entirety of Subsection B governing indirect interconnection in the agreements. These items would simply have been excised from the final agreements, but they were not.

Other portions of the ICAs also show that traffic can be exchanged by direct and/or indirect interconnection. First, [*39] the recitals address the possibility of either direct or indirect interconnection. Second, Section IV(B) on indirect interconnection references the need to address traffic factors in Appendix A of the ICA, and Appendix A addresses these factors. Moreover, Appendix A references rates for both "Indirect Interconnection: $0.017" and "Direct Interconnection: $0.017" -- rates provided in accordance with Section IV(B)(2) of the ICAs which specifically shows that the parties contemplated traffic could occur directly and/or indirectly: "*Indirect traffic* routed through a third-party tandem provider is subject to the same compensation calculation as that used for the *direct route* in both the Mobile to Land direction and the Land to Mobile direction." (Emphasis added.)

By agreeing to establish the direct interconnection facilities, Defendants have provided Plaintiff the means to route its originated traffic to Defendants without incurring third-party transit charges. As previously noted, this arrangement is not affected by the homing of Verizon Wireless's 478-391 NPA-NXX code or Alltel's 478-672 NPA-NXX code to Macon. Nothing in the ICAs, however, limits either party's right to route its traffic [*40] to the other party indirectly.

Based upon the multiple references in the ICAs to treatment, location, and compensation terms for direct and indirect interconnection arrangements, it is clear that the Commission had a rational basis for its conclusion that nothing in the ICAs provides that the existence of a direct interconnection between the parties precludes the exchange of traffic via indirect interconnection.

4. Virtual NXX

The term "virtual NXX" is defined by the FCC as a central office code that corresponds to a particular rate center but is assigned to a customer located in a different rate center. See *In re Developing a Unified Intercarrier Compensation Regime, 16 FCC Rcd 9610, 9652 at ¶ 115 n.188, 2001 FCC LEXIS 2339, at ** 125 (Apr. 27, 2001)*. In two prior Commission dockets, the Commission rejected virtual NXX arrangements in the context of wireline competitive LECs. [1:08-CV-1438-CC, doc. no. 35-7 at 70.] The Commission used the ILEC's local calling area as the local geographic area in those two dockets. [1:08-CV-1437-CC doc. no. 28-7 at 64; 1:08-CV-1438-CC, doc. no. 35-7 at 70-71.] As the Commission recognized, however, *FCC Rule 51.701(b)(2)* defines the local calling area [*41] for calls between a LEC (such as PSTC) and a CMRS provider (such as Verizon Wireless or Alltel) as the MTA in which the LEC is located. See *Alma Commc'ns Co., 490 F.3d 619, Atlas Tel. Co., 400 F.3d 1256*. Therefore, as long as the network of a wireless caller is in the MTA of a wireline provider, as is true in these cases, no virtual NXX has been created. The Commission's decision that the rating and routing regimes at issue in these cases do not produce virtual NXX arrangements is therefore supported by FCC rule, by federal case law, and by the most fundamental realities of mobile wireless service.

Under Plaintiff's proposed framework, a wireless customer's movement from one wireline local calling area to another would prevent him or her from ever having a local calling scope. There is nothing virtual about Defendants' networks or their customers. First, Defendants' customers have a community of interest within the PSTC local calling area. Second, Defendants have built-out networks that directly serve customers within Plaintiff's service area, including cell sites that provide coverage within Plaintiff's territory and dedicated transport facilities that connect with Plaintiff at the [*42] precise point of interconnection in Macon requested by Plaintiff. The fact that some calls to Verizon Wireless and Alltel numbers will happen to terminate outside of PSTC's service territory does not create a dialing disparity. It has nothing to do with virtual NXX and is not unique to Alltel's or Verizon Wireless's operation of its business. Because the Commission was neither arbitrary nor capricious in interpreting the ICAs and its own prior orders, and because Plaintiffs argument contradicts federal law, Plaintiff's virtual NXX argument fails.

5. Alternative Dispute Resolution

Although these two cases are similar in most regards, they differ slightly with respect to Plaintiff's claim that the Commission should have required the parties to participate in ADR. In the Verizon Wireless case, the Commission properly decided that, in the first instance, ADR was inappropriate because the ADR section of the Verizon ICA specifically states that it applies only to controversies or claims arising out of or relating to the ICA and the ICA does not address code loading, the primary issue in the Verizon Wireless case. As noted earlier, code loading is an obligation on all carriers that exists regardless [*43] of whether the carriers have entered into an ICA. The Verizon Wireless dispute cannot, therefore, be said to have arisen from the ICA. PSTC submitted a proposed procedural schedule to the Commission for resolution of the merits of Verizon Wireless's complaint. Therefore, the Commission's finding that the PSTC acted inconsistently with any rights to ADR that it had was rational.

In the Alltel case, the parties did not enter into their ICA until almost two months after Alltel filed its Complaint with the Commission and, therefore, the ADR provision cannot apply because the dispute could not have arisen from the ICA. PSTC also filed a counterclaim before the Commission in the Alltel case thereby waiving any right to ADR it might have had. See *USA Payday Cash Advance Center #1. Inc. v. Evans, 281 Ga. App. 847, 849, 637 S.E.2d 418 (2006)*. The Commission rationally concluded that the request for ADR was not raised until prejudicially late i.e., in the briefing following the filing of the counterclaim, submission of testimony, and the evidentiary hearing.

In any event, even if the ADR provision applied generally to these cases, it specifically exempts actions for injunctive relief. The relief that Defendants [*44] sought before the Commission was equitable in nature, i.e., the prevention of PSTC's planned rating change in the Alltel case and the required loading of codes by PSTC in the Verizon Wireless case. In addition, Plaintiff could have initiated the ADR process if it believed the process applied, but it never did so. Section VIII(C) of the ICAs outlines how a party to the agreement requests dispute resolution. Plaintiff failed to follow this procedure, continued its defense before the Commission without asking for a stay to engage in dispute resolution, and with respect to the Verizon Wireless case actually drafted the procedural schedule the Commission followed.

Finally, the dispute resolution procedure in the ICAs provides that legal actions may be pursued if negotiations do not resolve the issue within sixty days. Almost a year elapsed while these matters were pending before the Commission. Therefore, even if the ADR provision applied to these disputes, the sixty-day time limit for engaging in ADR had long expired, thereby enabling either party in either case to bring a dispute to the Commission, a court, or another agency with appropriate jurisdiction to decide the matter. The Commission's [*45] finding that the ADR provision did not apply to these cases and, in addition, was waived by Plaintiff, had a rational basis and is affirmed by this Court.

B. *47 C.F.R. § 20.11*

Plaintiff contends that the Commission's orders violate *47 C.F.R. § 20.11(a)*, which provides as follows: "A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable." Plaintiff claims that the interconnection established in these cases is not economically reasonable for Plaintiff and criticizes the Commission for purportedly providing no analysis as to why the subject interconnection arrangements are economically reasonable. This argument ignores the fact that the interconnection facilities at issue in these cases were agreed to by Plaintiff and, as the Commission found, were established at the request of Plaintiff. Further, even though indirect interconnection is allowed per the ICAs, Plaintiff is not required to route its originated traffic to Defendants indirectly. In any event, routing third party calls away from transiting [*46] PSTC's facilities is not prohibited by the interconnection agreements and, as the Commission found and the record demonstrates, is consistent with industry practice. PSTC has not demonstrated any right to control the routing of traffic or to receive access charges from third-party carriers for such traffic. Access charges are imposed for terminating, not transiting, traffic from other carriers, and calls from third parties to Alltel or Verizon Wireless are not destined for PSTC's customers and need not transit PSTC's facilities. As for traffic terminating to PSTC for which PSTC would be otherwise entitled to reciprocal compensation under the interconnection agreements, PSTC's own record evidence before the Commission did not demonstrate any reduction of traffic terminating to it following Alltel's re-home. Finally, as the Commission

found, PSTC was not required to make any network changes, or incur any additional costs, as a result of the re-home.

Therefore, the Commission rationally determined, and this Court affirms under the "arbitrary or capricious" standard of review, that PSTC did not demonstrate any injury based on third-party originated or other traffic for which it would be [*47] entitled to recovery under the ICAs and did not demonstrate that the interconnection is "uneconomic" or unreasonable under *47 C.F.R. § 20.11*. Because it is undisputed that the parties agreed to the direct interconnection facilities without resorting to statutory arbitration under *Section 252* of the Act, and because indirect interconnection, in addition to direct interconnection, was incorporated into the ICAs, the Commission did not err in determining the voluntary agreement was economically reasonable.

C. Georgia Contract Law

Plaintiff argues that the Commission violated Georgia contract law by failing to give effect to and correctly interpret the ICAs. This Court rejects that argument for the reasons stated previously in this Order. The Commission correctly interpreted and applied the ICAs in light of the plain wording of those agreements and applicable provisions of federal law. In particular, the Commission was correct to conclude that the parties did not intend to contract around federal law relating to local dialing parity in both cases and relating to code loading in the Verizon Wireless case. See *NuVox, 2006 U.S. Dist. LEXIS 65029, at *54-55*.

D. Georgia Administrative Procedure [*48] **Act and Open Meetings Act**

Although the Verified Complaint states no claim for relief on this ground, in the Statement of Facts portion of its Principal Brief on the Merits and at oral argument, Plaintiff asserted that the Commission violated the Georgia Administrative Procedure Act and the Georgia Open Meetings Act. The Commission's votes, however, were taken at open meetings, and the Commission's written orders properly memorialized those votes. As explained in the Commission's Orders on Reconsideration, in adopting the Commission Staff's recommendation, the Commission considered the merits of Plaintiff's Applications for Review. Consistent with the Staff recommendations it adopted, the written orders presented its reasons for adopting the hearing officer's conclusions. Plaintiff has not cited to any authority that prohibits the Commission from including in an order its reasons for adopting the conclusions reached by a hearing officer in an initial decision. In addition, *O.C.G.A. § 50-13-17(a)* provides that, when acting "on review from the initial decision of [a hearing officer], the [Commission] shall have all the powers it would have in making the initial decision." Thus, the Commission [*49] is not constrained to the hearing officer's initial decision in issuing an order of the full Commission.

There was no violation of the Georgia Open Meetings Act in connection with the April 4, 2008 Commission orders. Further, in addressing PSTC's Motions for Reconsideration in its April 15, 2008 Administrative Session, the Commission ratified its prior order. That vote to ratify the order also took place in an open meeting of the Commission. There can be no question that the Commission's orders in the administrative proceeding complied with the Georgia Open Meetings Act.

E. Permanent Injunction Standards

For the reasons set forth above, Plaintiff has failed to demonstrate the actual success on the merits required for a permanent injunction. Additionally, for the reasons set forth in the Court's Order of May 6, 2008, and adopted here, Plaintiff has not convinced the Court that it would suffer irreparable harm if a permanent injunction is not entered, and the ability to calculate monetary damages provided Plaintiff an adequate remedy at law. The harm to the public interest and to other parties if this Court granted Plaintiff's request for permanent injunctive relief outweighs any inconvenience [*50] to Plaintiff arising from this Court's denial. It is in the public interest that efficient and competitive telecommunications services exist through which any user can call any other user. See *47 U.S.C. §§ 151, 160* & *332(a)(3)* (discussing policies of competition and nondiscrimination). Plaintiff has not shown that the extraordinary relief sought would aid the public interest.

IV. CONCLUSION

For the reasons set forth above, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's request for injunctive relief in both of the above-styled cases, 1:08-CV-1437-CC and 1:08-CV-1438-CC, is **DENIED**. The Clerk is directed to enter final judgment in favor of Defendants in these cases.

SO ORDERED, this 4th day of February, 2010.

/s/ Clarence Cooper

CLARENCE COOPER

United States District Judge

ATTACHMENT C

1 of 3 DOCUMENTS

PUBLIC SERVICE TELEPHONE COMPANY, Plaintiff - Appellant, versus THE GEORGIA PUBLIC SERVICE COMMISSION, CHUCK EATON, in his official capacity as Chairman of the Georgia Public Service Commission, ROBERT B. BAKER, in his official capacity as Commissioner of the Georgia Public Services Commission, H. DOUG EVERETT, in his official capacity as Commissioner of the Georgia Public Service Commission, ANGELA E. SPEIR, in her official capacity as Commissioner of the Georgia Public Service Commission, ALLTEL COMMUNICATIONS, LLC f/k/a Alltel Communications et al., Defendants - Appellees. PUBLIC SERVICE TELEPHONE COMPANY, Plaintiff - Appellant, versus THE GEORGIA PUBLIC SERVICE COMMISSION, CHUCK EATON, in his official capacity as Chairman of the Georgia Public Service Commission, ROBERT B. BAKER, in his official capacity as Commissioner of the Georgia Public Service Commission, H. DOUG EVERETT, in his official capacity as Commissioner of the Georgia Public Service Commission, ANGELA E. SPEIR, in her official capacity as Commissioner of the Georgia Public Service Commission, VERIZON WIRELESS OF THE EAST LP, et al., d/b/a Verizon Wireless, Defendants - Appellees.

No. 10-11036, No. 10-11037

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

404 Fed. Appx. 439*; *2010 U.S. App. LEXIS 25324

December 9, 2010, Decided
December 9, 2010, Filed

NOTICE: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [**1]

Appeals from the United States District Court for the Northern District of Georgia. D.C. Docket No. 1:08-cv-01437-CC. D.C. Docket No. 1:08-cv-01438-CC. *Public Serv. Tel. Co. v. Ga. PSC, 2010 U.S. Dist. LEXIS 134209 (N.D. Ga., Feb. 4, 2010)*

DISPOSITION: AFFIRMED.

COUNSEL: For PUBLIC SERVICE TELEPHONE COMPANY, Plaintiff - Appellant: John Curtis Allen, L. Craig Dowdy, McKenna Long & Aldridge, LLP, ATLANTA, GA; Benjamin H. Dickens, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, Washington, DC.

For THE GEORGIA PUBLIC SERVICE COMMISSION, CHUCK EATON, in his official capacity as Chairman of the Georgia Public Service Commission, ROBERT B. BAKER, in his official capacity as Commissioner of the Georgia Public Services Commission, H. DOUG EVERETT, in his official capacity as Commissioner of the Georgia Public Service Commission, Defendant - Appellees: Daniel Stephen Walsh, Sidney Ray Barrett, Jr., Attorney General's

Office, ATLANTA, GA.

For ANGELA E. SPEIR, in her official capacity as Commissioner of the Georgia Public Service Commission., Defendant - Appellee: Stephen Kraskin, The Law Office of Stephen G. Kraskin, Washington, DC; Stephen B. Rowell, Alltell Communication, LLC, Little Rock, AR; Daniel Stephen Walsh, Attorney General's Office, ATLANTA, GA.

For ALLTEL COMMUNICATIONS, LLC, f.k.a. Alltel [**2] Communications, Defendant - Appellee: Charles F. Palmer, Troutman Sanders, Atlanta, GA; Kevin Gregory Meeks, Troutman Sanders, LLP, ATLANTA, GA.

For NATIONAL EXCHANGE CARRIER ASSOCIATION, Amicus Curiae: Suzanne Yelen, Law Offices of Gregory J. Vogt, Washington, DC.

JUDGES: Before BARKETT, MARTIN and HILL, Circuit Judges.

OPINION

[*440] PER CURIAM:

Public Service Telephone Company ("PSTC") appeals from the district court's final judgment affirming two related orders of the Georgia Public Service Commission (the "Commission") in favor of Alltel Communications and Verizon Wireless. PSTC contends that the Commission and district court erred in failing to give clear effect to the terms of interconnection agreements entered into by the parties within the framework of the Telecommunications Act of 1996. PSTC asserts that the Commission's orders violate federal law and requests that this Court reverse the district court's order and enjoin the enforcement of the Commission's orders. We have considered the various orders of the Commission and district court, as well as the briefs and oral argument of the parties, and find no reversible error.

In this review of the administrative decision by the Commission, we apply a two-tiered [**3] standard of review. Issues of federal law are reviewed de novo. *MCI Worldcom Commc'ns, Inc. v. BellSouth Telecomm., Inc., 446 F.3d 1164, 1170 (11th Cir. 2006)*. The Commission's factual findings and application of state law, however, including its interpretation and application of the parties' interconnection agreements, are reviewed under an "arbitrary and capricious" standard. Id.; see also *Bellsouth Telecomm., Inc. v. MCImetro Access Transmission Servs., Inc., 317 F.3d 1270, 1279 (11th Cir. 2003)* (en banc) (recognizing authority of Georgia Public Service [*441] Commission to interpret and enforce interconnection agreements). "A finding that a decision was arbitrary or capricious requires us to find no rational basis for the decision. Once we find a rational connection between the evidence and the decision, we must defer to the agency's expertise." *Tackitt v. Prudential Ins. Co., 758 F.2d 1572, 1575 (11th Cir. 1985)* (citations omitted); see also *Miccosukee Tribe of Indians of Fla. v. United States, 566 F.3d 1257, 1264 (11th Cir. 2009)* ("The arbitrary and capricious standard is exceedingly deferential. We are not authorized to substitute our judgment for the agency's as long as its conclusions [**4] are rational." (quotations and citations omitted)).

On this record, and under our deferential standard of review, we cannot say that the Commission's findings and subsequent orders based thereupon were arbitrary and capricious. Accordingly, the district court did not err in denying PSTC's request to enjoin the enforcement of the Commission's orders.

AFFIRMED